

Commissioner of C. Ex. Vs. Rasik Polyflexil Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-26-2002

Reported in : (2002)(84)ECC858

Judge : P Chacko

Appellant : Commissioner of C. Ex.

Respondent : Rasik Polyflexil Pvt. Ltd.

Judgement :

1. This appeal of the Revenue is against the order of the Commissioner (Appeals) allowing Modvat credit of Rs. 78,033.89 to the respondents under Rule 57H of the erstwhile Central Excise Rules, 1944.

3. The respondents had filed declarations under Rules 57G and 57H in respect of their inputs on 10-2-2000. They had, however, taken Modvat credit of Rs. 78,034/- under Rule 57H, one day earlier i.e. on 9-2-2000. After having filed the Rule 57H declaration, they availed the credit for payment of duty on their final products. They also applied to the jurisdictional Asstt. Commissioner to condone the delay involved in the filing of the declaration. The department by show-cause notice proposed to disallow the credit on the ground that Rule 57H did not permit belated filing of 'declaration and did not provide for condonation of any delay. The assessee contested the proposal and raised two objections. One objection was that the show-cause notice was issued by the Superintendent of Central Excise without jurisdiction and the other was that even if the credit taken on 9-2-2000 was

reversed, the same could have validly been taken on or after 10-2-2000 in terms of Rule 57H and, therefore, the entire exercise initiated by the department through the show-cause notice was revenue neutral. The adjudicating authority rejected both the grounds and confirmed the demand of duty and imposed on the assessee a penalty. The appeal preferred by the party against the order of the adjudicating authority was allowed by the Commissioner (Appeals). Hence the appeal of the Revenue.

6. Ld. Consultant for the respondent reiterates the averments contained in their cross-objections and seeks to rely on the following decisions:-Unisef Electronics (I) Pvt. Ltd. v. CCE, Meerut - 1998 (101) E.L.T. 514 (Tribunal)Greysham & Co. v. CCE, New Delhi Consultant submits that though under Rule 57H there was no express provision for condonation of delay of a declaration filed under that Rule, it was still open to the departmental authorities to apply the delay condonation provisions of Rule 57G to an appropriate case under Rule 57H. According to the Consultant, provisions of the two rules should be read together, in which case the declaration filed on 10-2-2000 would be valid, upon the condonation of its delay, for purpose of the Modvat credit taken on 9-2-2000. Even if the credit taken on 9-2-2000 was reversed, the assessee would have been able to retake the credit under Rule 57H on or after 10-2-2000. Hence the show-cause notice proceedings were a futile revenue neutral exercise, the consultant submits. He prays for rejecting the revenue's appeal.

8. The Modvat credit in question was taken on 9-2-2000 before filing the necessary declaration under Rule 57H. The rule prescribed that a manufacturer of final product could take credit on the inputs lying in stock as on the date of filing declaration under Rule 57G, admittedly, in this case, the Rule 57G declaration was also filed along with Rule 57H declaration on 10-2-2000. This meant that any credit, which could be taken under Rule 57H, would be in respect of the inputs which were in stock as on 10-2-2000, the date of filing of the Rule 57G declaration. The assessee in this case took the credit in respect of inputs which were in stock as on 9-2-2000. Obviously, this was not permissible under Rule 57H the provisions whereof were of transitory nature and stricter in operation than the provisions of Rule 57G, which provided for prospective credit on inputs. As rightly pointed out by

Id. JDR, the very text of Rule 57H began with a non obstante clause "notwithstanding anything contained in Rule 57G". Thus the provisions of Rule 57H were special and independent of those of Rule 57G and hence the delay condonation provisions of Rule 57G were not applicable to a belated declaration filed under Rule 57H. On this point, the argument of the DR has to be sustained.

9. The issue now requires to be looked at from a different angle.

Suppose the assessee had not taken the Rule 57H credit on 9-2-2000 or, after taking such credit on 9-2-2000, reversed it subsequently on the same day. Still then they would have been able to take such credit in respect of the inputs which were in stock as on 10-2-2000. In other words, the show-cause notice in question would not have come in the way of the respondents taking the benefit of the Modvat credit under Rule 57H. The argument of the consultant on this aspect appears to be well-founded. The decisions cited by the Consultant are to this effect.

The duty-paid nature of the inputs and the receipt and utilization thereof in the process of manufacture of final products are not in dispute. The benefit of Modvat credit of the duty paid on the inputs should not be denied on the ground of minor procedural or technical infractions.

10. Ld. Consultant has raised a jurisdictional issue. He has submitted that the Superintendent, who issued the show-cause notices, had no jurisdiction to do so. This argument has been rebutted by the DR on the strength of Board's Circular No. 299/15/97-CX dated 27-2-97. Wherein it was provided that show cause notices should be issued by the Range Superintendent where they were to be adjudicated by the Asstt.

Commissioner in respect of cases not involving fraud, collusion, wilful misstatement or suppression of facts. In the instant case, none of these elements was alleged in the show-cause notices and, therefore, the Superintendent was competent to issue the show-cause notices. The jurisdictional objection is not tenable.

11. On the basis of the findings recorded above, it is held that the Modvat credit in question would be admissible to the respondents if taken on or after 10-2-2000. The credit taken prior to 10-2-2000 cannot be allowed in terms of Rule 57H. Accordingly, the order of the Commissioner (Appeals) is set aside to the extent the Modvat credit in question was allowed under Rule 57H, and the present appeal of the Revenue is allowed. However, this order will not stand in the way of the assessee reversing the credit in question and taking re-credit of the duty on the strength of the declaration filed on 10-2-2000, in accordance with law.

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