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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-09-2003

Reported in : (2003)(87)ECC361

Judge : P Chacko

Appellant : interarch Building Products Ltd.

Respondent : Cce

Judgement :

1. The controversy in this appeal is regarding Modvat credit on a quantity of 30803 kgs. of raw materials which were claimed by the appellants to be in stock in their factory as on 1.3.94 and hence eligible for Modvat credit under Rule 57H of the erstwhile Central Excise Rules, 1944.

2. The appellants were engaged in the manufacture of aluminium panels, profiles, etc. (Tariff Sub-heading 7606.29) which were exempt from payment of duty prior to 1,3.94. On 1.3.94, these products became dutiable in terms of Notification No. 44/94-CE. The appellants wanted to take Modvat credit of the duty paid on the aforesaid quantity of raw materials which were claimed to be in stock with them as on 1.3.94.

They wanted to do so under the transitional provisions of Rule 57 H ibid. The department resisted this and issued a show-cause notice, which was contested by the party. In adjudication of the dispute, the Asstt. Commissioner disallowed the

credit of Rs. 9,13,157.82 taken by the party under Rule 57H on the aforesaid quantity of raw materials.

The appeal filed by the party against the decision of the adjudicating authority was rejected by the Commissioner (Appeals). Hence the present appeal.

4. Ld. Counsel for the appellants has given a chronology of the events relevant to the case. On 1.3.94, the stock position of the finished goods and raw materials was verified by the proper officer of the department, who certified that 30803 kgs. of raw materials were found in stock. On 7.3.94, the appellants applied for permission of the Asstt. Commissioner to avail Modvat credit on this stock of inputs, amounting to Rs. 9,13,157.82 On the same day, they filed declaration under Rule 57G with the department. On 8.3.94, the appellants submitted a reminder to the Asstt. Commissioner for permission for availment of the Modvat credit. On 16.3.94, the jurisdictional Superintendent of Central Excise wrote to the Asstt. Commissioner recommending grant of permission to the party to take the Modvat credit. The Superintendent reiterated that the aforesaid quantity of raw materials Was found in stock on physical verification. Ld. Counsel submits that the requirements of Rule 57H were satisfied by the party and hence the Modvat credit ought to have been allowed.

5. Ld. DR, on the other hand, submits that a part of the above quantity of raw materials was in fact lying in stock with the job workers of the appellants and such quantity cannot be considered to be a part of the stock of inputs with the appellants. That quantity of raw materials works out to 6804.9 kgs. Ld. DR further submits that yet another part of the total quantity of raw materials was in fact lying with another unit of the appellants, which quantity worked out to 1319.048 kgs. Ld.

DR submits that this quantity also cannot be considered to be a part of the stock of inputs with the appellants.

6. Having examined the submissions, I observe that, regarding the quantity of 1319 kgs. of raw materials which were admittedly lying with another unit of the appellants, at the material time, the appellants' counsel has not been able to successfully rebut the plea of the DR. The remaining quantity of raw materials is

29484 kgs. It was out of this quantity that a quantity of 6804.9 kgs. were lying with the appellants' job workers. Ld. Counsel has argued that this quantity should be considered to be a part of the appellants' stock of inputs for purposes of Rule 57H. In this connection. He has relied on the Tribunal's Final Order No. A/58/2000-NB (DB) dated 28.1.2000 in Appeal No. E/55/93-NB (DB) in the case of Jai Drinks (P) Ltd. v. CCE, Jaipur. In the cited case, a part of the inputs on which the assessee wanted to take Modvat credit under Rule 57H was lying with their dealers. The Tribunal found that since those goods were owned by the assessee that should also be deemed to be a part of the stock of inputs with the assessee for purposes of Rule 57H.7. In the instant case, 6804 kgs. of raw materials which were admittedly issued by the appellants to their job workers under Sub-rule (3) of Rule 57F were lying with the job workers at the material time but those goods, nevertheless, belonged to the appellants and the same were meant for processing and return to the appellants for utilisation in the manufacture of final product.

8. Following the ratio of the decision cited by the Counsel, I hold that 6804 kgs. of raw materials lying with the appellants' job workers formed part of the stock of inputs of the appellants for purposes of Rule 57H. Since the appellants had intimated the stock to the department under Sub-rule Kb) of Rule 57H, they satisfied all the conditions for availment of the Modvat credit under Rule 57H. Though the intimation related to the total quantity of 30803 kgs. of raw materials, the appellants will be entitled to Modvat credit under this Rule in respect of only 29484 kgs. of raw materials as the remaining quantity was lying with their other unit, in respect of which Rule 57H will not be applicable. Therefore, the impugned order is set aside in respect of the Modvat credit on 29484 kgs. of raw materials and affirmed in respect of the Modvat credit on the remaining quantity of 1319 kgs. of raw materials. The appeal stands allowed in part.

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