

Jct Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-01-2003

Reported in : (2003)(88)ECC410

Judge : P Chacko

Appellant : Jct Ltd.

Respondent : Cce

Judgement :

1. The appellants are manufacturers of Polyester/Nylon Filament Yarn and Polyester Staple Fibre of Headings 54.02 and 55.03 respectively of the Central Excise Tariff Schedule. They were availing the benefit of Modvat credit on inputs under Rule 57A of the erstwhile Central Excise Rules, 1944 during the period of dispute. They used to manufacture polyester staple (P.S.) fibre and send the same to job workers for conversion into spun yarn under the provisions of Rule 57F. When they sent the P.S. fibre to job worker under Sub-rule (4) of Rule 57F, they debited 10% of the value of the goods under Sub-rule (6) and when they received the spun yarn made out of the P.S. fibre, from the job worker, they took re-credit of the amount under Sub-rule (7). This was the modus operandi of the appellants insofar as the manufacture of polyester yarn was concerned. During the period Jan. to July 1997, they had sent out certain quantities of P.S fibre, under challans, to their job workers. The spun yarns manufactured by the job workers from such quantities of P.S. fibre were received back in the appellants' factory during August to October 1997. Officers of the department conducted a scrutiny of the records in

the factory of the appellants and found that the quantities of spun yarn received back from job workers were less than the quantities of P.S. fibre dispatched earlier to them for conversion into yarn. On this basis, the department took the stand that the appellants were not entitled to take re-credit, under Sub-rule (7), of the entire amount which had been debited earlier under Sub-rule (6).

In other words, the appellants ought to have limited the credit under Sub-rule (7) to such debit under Sub-rule (6) as was proportionate to the quantity of spun yarn received in their factory. The department, by show-cause notice, asked the party to reverse the entire credit which they had taken under Sub-rule (7), on the ground that the provisions of Rule 57F had been contravened. The notice was contested by the party.

The adjudicating authority disallowed the entire credit of Rs. 5,13,657 which had been taken under Rule 57F (7) by the appellants on receipt of the spun yarn returned by their job workers during the aforesaid period of August to October 1997. The authority also imposed a personal penalty of Rs. 75,000 on the party under Rule 173Q (1) (bb). The Commissioner (Appeals), in the appeal preferred by the party against the order of the lower authority, allowed a part of the credit, amounting to Rs. 1,45,615 and disallowed the rest amounting to Rs. 3,68,042. He also reduced the quantum of penalty to Rs. 50,000. The present appeal is against the order of the lower appellate authority.

2. It appears from the record that the credit of Rs. 3,68,042 has been denied to the appellants on the ground that the entire quantity of P.S.fibre dispatched by them under Sub-rule (6) to their job worker, M/s Santogen Spinning Mills, Silvassa had not been received back as spun yarn in the appellant's factory under Sub-rule (7). It further appears that the appellants took the stand that the difference in quantity was the waste generated in the conversion of P.S. fibre to spun yarn in the job worker's factory and the same was cleared by the latter on payment of duty. According to the appellants, where the waste was so cleared by the job workers on payment of duty under Sub-rule (5) (ii), it was neither necessary nor possible to return the waste to the principal manufacturer. Even in such a case, the principal manufacturer (in this case, the appellants) was entitled to take re-credit of the

entire amount debited earlier under Sub-rule (6) at the time of dispatch of the inputs to the job worker. Ld. Counsel for the appellants has also put forward this case today. He has also placed on record a copy of the job worker's certificate dated 14.10.99 which certified that a quantity of 1450.900 kgs. of waste had been generated in the course of conversion of P.S. fibre to spun yarn supplied by the appellants during the period Jan. to July 1997 and that the duty liability on such waste had been discharged by them on 11.7.97. Ld. Counsel has particularly referred to be observation of the Commissioner (Appeals) that waste stood excluded from the scope of Sub-rule (8) of Rule 57F. Ld. Counsel has argued that Sub-rule (8) did not require dispatch of waste by job worker to the principal manufacturer where the former had cleared such waste already on payment of duty. The sub-rule clearly envisaged that it was only the quantity of inputs less the quantity of waste that should be returned by the job worker to the principal manufacturer to enable him to take credit, under Sub-rule (7), of the amount earlier debited under Sub-rule (6). Ld. DR has, on the other hand, argued that it was the appellant's burden to substantiate that the waste had been cleared on payment of duty by the job worker. Only when this was substantiated were the appellants entitled to take credit of the full amount debited. In this connection, Id. DR has referred to the format of the challan which was required to be used for the dispatch of goods under Rule 57F. He has particularly referred to Column No. 4 of Part-II of the format, which, in a case where waste was not returned by the job worker to the principal manufacturer but cleared on payment of duty, required the job worker to furnish particulars of the invoice under which the waste was cleared on payment of duty as well as the quantum of duty paid on the waste. Ld. DR has submitted that, in the instant case, it is not clear whether this material information had been furnished to the adjudicating authority or the first appellate authority.

3. It follows from the above submissions that the matter must go back to the original authority. None of the challans whereunder spun yarn was received by the appellants during August to October 1997 is available on record, nor is it discernible whether any of these documents was available to any of the authorities below. The lower appellate authority has rightly observed that the waste generated from the conversion of P.S. fibre to spun yarn stood excluded from the scope of Sub-rule (8) of Rule 57F. The original authority was also right when it observed to

the effect that all the sub-rules of Rule 57F should be read together. When the provisions of Sub-rule (8) are read with those of Sub-rule (5), it will become clear that the waste when cleared on payment of duty by the job worker himself need not, and cannot, be returned to the principal manufacturer. In such a case, the quantity returned by the job worker will be less by the quantity of waste.

Nevertheless, the principal manufacturer will be entitled to take credit, under Sub-rule (7), of the entire amount of 10% of the value, debited earlier under Sub-rule (6). In view of these provisions, what requires to be ascertained in this case is whether the waste had, in fact, been cleared by the job worker on payment of duty. This can be substantiated only by producing the challans containing full entries, particularly in Column No. (4) of Part-II thereof. It may also be possible for the appellants to prove the fact by producing a certificate from the Range Officer having jurisdiction over the job worker. Apparently, in this case, no proof was adduced to the satisfaction of the original authority.

4. I set aside the orders of the lower authorities and allow this appeal by way of remand, directing the original authority to re-consider the question of admissibility of the credit of Rs. 3,68,042 in the light of the observations made hereinbefore. Needless to say that a reasoned order shall be passed in accordance with law after affording to the party a reasonable opportunity of being heard. It is also made clear that the assessee will be at liberty to produce the relevant challans and adduce additional evidence to substantiate their claim that their job worker had cleared the waste on payment of duty.

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