Commissioner of Central Excise Vs. Maxxon India Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-23-2003

Reported in : (2003)(89)ECC398

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Maxxon India Limited

Judgement :

1. This is an application filed by Revenue for rectification of mistake in the Tribunal's Final Order No. A/989-95/2000 dated 14.11.2000.

2. Shri U. Raja Ram, learned JDR, submitted that M/s. Maxxon India Limited, Respondents, availed Modvat Credit of duty paid on inputs, namely, granules used in the manufacture of BOPP films; that during the process of manufacturing, certain amount of waste and scrap of plastic arises at various stages of production; that the part of waste is to be cleared as such at nil rate of duty under Notification No. 53/88-CE and some parts of waste are reprocessed in their factory premises into granules which are also cleared at nil rate of duty under the same Notification; that the show cause notice was issued for recovery of amount of Modvat credit in respect of inputs contained in waste cleared as such and reprocessed granules under the provisions of Rule 57C of the Central Excise Rules, 1944; that the Tribunal under the present Order has held that the duty shall be payable on granules termed as sub-standard granules not fit for use in the

manufacture of BOPP films cleared for home consumption. The learned JDR submitted that a mistake has crept in the Final Order inasmuch as show cause notice related to the recovery of the Modvat credit under Rule 57C on the quantity of inputs contained in reprocessed granules cleared at nil rate of duty whereas the Tribunal has rendered the decision on recovery of duty of excise on reprocessed granules which was never demanded in the show cause notice; that no duty is recoverable as the effective rate of duty on such granules is exempted under Notification and Modvat credit recovery could not be effected in the absence of any decision on the issue. He finally mentioned that as the reprocessed granules are chargeable to nil rate of duty, the Modvat credit has to be reversed in respect of inputs contained therein.

3. Opposing the prayer, Shri A.N. Haksar, learned Senior Advocate, submitted that the granules brought into the factory by them as inputs have been used in the manufacture of their final product BOPP films; that it is admitted fact that certain waste had arisen at various stages of the production; that as per the provisions of Rule 57D the Modvat credit is not to be denied in respect of the inputs contained in such waste; that the use of such waste for further process by them will not make the provisions of Rule 57C applicable.

4. We have considered the submissions of both the sides. Rule 57D of the Central Excise Rules at the relevant time provided that the credit of specified duty shall not be denied or varied on the ground that part of inputs is contained in any waste, refuse or bye-product arising during the manufacture of the final product. It is admitted fact that the waste has arisen during the process of manufacture of the final product cleared by the Respondents. The Modvat credit of the duty cannot be denied or varied in respect of the quantity of inputs contained in such waste in terms of the provisions of Rule 57D. As per the provisions of Rule 57F the duty is payable on such waste on its clearance from the factory as if such waste has been manufactured in the factory. Such waste is exempted from payment of duty under Notification No. 53/88-CE. The contention of the Revenue is that once the waste is recycled and granules are obtained and cleared for home consumption at nil rate of duty, the Modvat credit to that extent has to be denied. This contention of Revenue was initially accepted by the Tribunal vide Final Order No. 994-1000/97-

NB dated 16.9.97. However, on application being filed by the Respondents, Tribunal had recalled the said Order by Miscellaneous Order No. ROM/34/98-NB dated 31.3.98 on the Respondents being pointed out that the Tribunal in their own case as reported in 1994 (72) ELT 483 had allowed their appeal. When the matter was reheard it had been contended by the Respondents that sub-standard granules obtained as a result of recycling of waste was also waste. The Tribunal, therefore, in the Final Order has clearly held that no duty shall be payable on waste and scrap. The Tribunal has held that duty shall be payable on sub-standard granules cleared for consumption as a new product out of waste has arisen. However, as far as reversal of Modvat credit is concerned, the question of such reversal does not arise in view of the provisions of Rule 57D of the Central Excise Rules. Accordingly the application filed by Revenue is rejected.