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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-24-2003

Reported in : (2003)(111)LC740Tri(Mum.)bai

Judge : A T V.K.

Appellant : Hemtex Syntetics Pvt. Ltd.

Respondent : Cce

Judgement :

1. In this appeal, filed by M/s. Hemtex Synthetics Pvt. Ltd. the issue involved is whether MODVAT Credit of the duty paid on Anti-static Oil is available to them.

2. When the matter was called, no one was present on behalf of the appellants. In fact the notice sent to them has been received back from the Postal Authorities. I, therefore, heard Shri H. Kothikar, learned S.D.R. and perused the records.

3. The Modvat credit has been disallowed to the Appellants on the ground that the Appellants had declared in their MODVAT declaration "Blended Lubricating Oil" falling under Heading No. 27.10 of the schedule to the Central Excise Tariff Act whereas they had brought the inputs which have been declared by the supplier as "Antistatic Oil" falling under Sub-heading 2710.90. The Commissioner (Appeals) has confirmed the disallowance of modvat credit on the ground that Heading 27.10 of the Tariff covers a No. of products and if the benefit of modvat credit is sought on a specific product, the same should have been specifically declared in the

declaration filed under Rule 57G of the Central Excise Rule, 1944. The Appellants have submitted in their Memorandum of Appeal that oil used by texturisers is described by different manufacturers differently such as Antistatic Oil/Blended Lubricating Oil/Conning Oil/Mineral Oil; that therefore the modvat credit of the duty paid on antistatic oil cannot be denied to them as they had already declared Blended Lubricating Oil in their modvat declaration; that it is settled proposition of law that broad based description for the purpose of Rule 57G is sufficient for compliance.

It has finally been submitted in the memorandum of appeal that the requirement of Rule 57G declaration has become redundant in view of amendment effected under Rule 57G by Notification No. 7/99-CE (NT) dtd.

9.2.1999.

4. Countering the argument, Shri H. Kothikar, learned S.D.R. reiterated the findings as contained in the impugned order.

5. I have considered the submissions of both the sides, Rule 57G of the Central Excise Rules, 1944 was amended by Notification No. 7/99-CE by which Sub-rule (11) was inserted. The said Sub-Rule provided that credit was not to be denied on the ground that the declaration filed under Sub-rule (1) of Rule 57G does not contain all the details required to be contained therein or the manufacturers fails to comply with any other requirements under Sub-rule (1). The Larger Bench of the Tribunal has interpreted the said Sub-Rule in Kamakhya Steel (P) Ltd. v CCE Meerut 2000 (120) ELT 247 (Tri-LB), In the said matter the Appellants had not included sponge Iron in their declaration and availed the modvat creadit of the duty paid on sponge Iron. The Appellate Tribunal after referring to Sub-rule (11) and Board's Circular No.441/7/99-CX dtd. 23.2.1999, remanded the matter to the assistant Commissioner with the direction to examine the admissibility of modvat credit in the light of the amended law and the Board Circular. In the present matter it is not disputed by the Revenue that the appellants had filed modvat declaration declaring Blended Lubricating Oil as one of their inputs. It is the case of the appellants that different manufacturers describe the oil by different name which are used by the persons involved in texturising of yarn. It has not been disputed by

the Revenue that the Antistatic Oil in question is used by the appellants for texturising yarn manufactured by them. It has been clarified by the Central Board of Excise and Custom in Circular No. 441/7/99-CX dtd. 23.2.1999 that Sub-rule (11) has been inserted in Rule 57G so as to empower the Assistant Commissioner to allow credit of duty paid on inputs ignoring minor procedural lapses in filing the declaration or in the invoices., It has further been clarified in the Circular that Assistant Commissioner should ensure that inputs have suffered duty and are being used in the process of manufacture. I am of the view that this Circular applies squarely to the facts of the present matter inasmuch as the appellants have filed the declaration for claiming credit on Blended Lubricating Oil and the Revenue has not disputed that the Antistatic Oil has suffered duty and is being used in the process of manufacture by the appellants.

Moreover, it has also not been controverted by the Revenue that the oil in question is used for texturising yarn. Accordingly, I set aside the impugned order and allow the appeal.

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