The Commissioner of Customs and Vs. Modern Petrofils Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-10-2003

Reported in : (2004)(92)ECC351

Judge : A Wadhwa, S T S.S.

Appellant : The Commissioner of Customs and

Respondent : Modern Petrofils Ltd.

Judgement :

1. The Revenue has filed this appeal against the order of the Commissioner, who after following the Board's instructions vide its Circular No.263/28/89-CX.8 dated 26/06/89 which prescribes that it was not necessary that credit of particular duty should be utilized for payment of that duty only and further specifies that the credit of specified duty could be utilized for payment of any one of the specified duties when credit as well as utilization thereof has been granted for separately for the purposes of proper Revenue accounting and also that the said position was again clarified in the monthly meeting held and were communicated through Trade Notice No.151/89 dated 14/08/89. Therefore, held there was nothing a miss in the respondents herein having utilized their RG 23A, modvat credit balance to discharge the duties under Section 3 of additional duties of Excise (Textile & Textile Articles Act, 1978) 40 of 1978).

2. Revenue has filed this appeal on the ground that (i) the Commissioner has erred in relying on this circular No.263/28/89/CX.8, in as much as the said circular

was issued in the context of Notification No.177/86/CE dated 01/03/86, the predecessor notification to the current applicable Notification No.5/94/CE(NT) dated 01/03/94 would be not applicable.

3. After hearing both sides and considering the issue involved, it is found that the Notification No.5/94/CE(NT) dated 01/03/94 prescribes the duty levied under Section 3 of the Additional Duty of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978) as specified duty, eligible for taking credit in the RG 23A account. The logic of Board's instruction therefore would equally apply to the utilization of this credit to be utilized for discharging the duty liabilities under Act 40 of 1978. We find no reason in the grounds, as taken, to find the order of the Commissioner to be not as per law and or improper in having accepted and followed an applicable circular, of the Board, which he was duty bond to complied with.

4. Ld. Advocate has also produced and relied upon the decision in the case of SRF Vs.CCE, Chennai (2002 (49) RLT 579 CEGAT-Chennai) wherein a Division Bench of this Tribunal has held that credit of Additional Excise Duty paid could be utilized for payment of basic excise duty on any final product and the submits that this decision would lead to a permission for reverse situations. There is no reason why this submission should not be accepted and permit and the credits and their utilization of such credits in the manner made by the respondents in this case.

5. We follow the logic of the decision in SRF case (supra) also arrive at a conclusion that the order of the Commissioner is legal and proper.

6. In view of the above findings, the appeal filed by the Revenue is rejected. The cross objection filed by the respondents stands disposed off accordingly.