Commissioner of Central Excise Vs. Pearl Polymers Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-14-2003

Reported in : (2003)LC1050Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Pearl Polymers Limited

Judgement :

1. The brief facts of the case are that the respondents herein are engaged in the manufacture of plastic bottles, jars, containers, etc., falling under Chapter sub-heading 3932.90. During the period July, 1997 to May, 1998 they cleared some quantity of finished products on payment of duty at tariff rate i.e. @ 25% and availed inodvat credit of duty paid on inputs used in the manufacture of such products. They also cleared some quantity of finished products at nil rate of duty claiming exemption in terms of serial No. 57 of the table annexed to Notification 4/97-CE dated 01/03/1997 and did not avail modvat credit of duty paid on the inputs used in the manufacture of products cleared under the notification. The Assistant Commissioner of Central Excise disallowed the benefit of serial No. 57 of the table to Notification 4/97 on the ground that the respondents had availed modvat credit of duty paid on inputs which were used in the manufacture of goods cleared on payment of duty at nil rate. The Commissioner (Appeals) set aside the adjudicating order holding that the respondents had complied with the requirement of condition No. 8 against serial No. 57 of the notification which stipulates that no

credit of the duty paid on inputs used in the manufacture of such goods should have been availed of by the manufacturer under Rule 57A of the Central Excise Rules, 1944.

Hence this appeal by the Revenue.

2. We have heard both sides. Let us explain the case with the following example: Assuming that the respondent had manufactured 30 plastic containers, they cleared 3 of them on payment of duty and availed modvat credit of the duty paid on inputs used in the manufacture of 3 containers.

They cleared balance 7 containers by availing exemption under Notification 4/97 and did not avail modvat credit of duty paid on inputs used in the manufacture of 7 containers.

The question therefore is whether the benefit of nil rate of duty under the notification is available in respect of 7 containers.

According to the department the benefit is not available for the reason that modvat credit of the duty paid on inputs used in the manufacture of 3 containers cleared on payment of duty was availed by the respondents.

3. There is no dispute that modvat credit was not availed on goods cleared without payment of duty. In other words, it is not the case of the department that the respondents had availed of double benefit (ii) by availing the benefit of modvat credit under Rule 57A, on the same goods.

4. Therefore we agree with the respondents that the availment of credit on inputs not used in the manufacture of final products cleared in terms of the notification, but used in the manufacture of final products cleared on payment of duty cannot disentitle them from the benefit of the exemption under Notification 4/97. Our view is supported by the order of the Tribunal in the case of Shivalik Agro Poly Products Ltd. v. CCE, Chandigarh 1999 (114) ELT 760 following the apex Court decision in the case of Chandrapur Magnet Wires (P) Ltd. v. CCE, Nagpur 1996 (81) ELT 3 (SC). We also note that it is only with the issue of Notification 5/98-CE dated 02/06/1998 that the availment of credit on duty paid on inputs specified in the

notification or any other product manufactured in the same factory operated as a bar to the availment of the benefit of concessional rate of duty / exemption under the notification (the relevant serial number is No. 69 which covers certain sub-heading of Chapter 39 where the condition set out above is required to be fulfilled).

5. In the light of the above discussion we see no reason to interfere with the impugned order and accordingly uphold the same and reject the appeal.