Finolex Inds. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-24-2003

Judge : M T K.D.

Appellant : Finolex Inds. Ltd.

Respondent : Cce

Judgement :
2. This is a dispute case of Modvat credit. The appellants have two units, one at Ratnagiri and the other at Pune. The Pune unit uses the PVC Resin for the manufacture of PVC pipes. The Ratnagiri unit despatched a consignment if P.V.C. resin, on payment of duty to a Surat party. On testing the material Surat consumer found certain defects in the material. Instead of sending the balance material back to the manufacturing unit, the appellants diverted the material from Surat to Pune Unit wherein the same was used for manufacture of pipes. The duty paying document, were originally in the name of Surat customer. The appellants were, therefore, served with a show-cause notice stating that, the credit of Rs. 87042/- was irregular. It is alleged that, either the provisions of Rules 173H or 173L or the despatch under Rule 57F (2) should have been followed to cover the movement.

3. The order of the Commissioner (Appeals) enumerates the following grounds for disallowing the credit.

"I also find that (i) no certificate in respect of diversion of consignment from the customer's end was obtained by the customer from the jurisdictional Range

Superintendent. (ii) after receipt of material from M/s Tejas Tekniplast Pvt. Ltd., Surat the appellants have also not bothered to keep the said consignment separately for physical verification of the concerned range superintendent. (iii) the rejected goods should be returned to M/s Finolex Ltd., Ratnagiri unit, who was the consignor and has to follow the proper procedure available under Rule 173H or Rule 173L only after remarking, reprocessing etc. the goods can be cleared to Finolex Inds., Pune as the goods have been rejected".

4. However, I find that the show-cause notice mentions that credit of Rs. 87042/- has been availed on the basis of invoice 3930 dated 3.7.97 issued by the appellants' Ratnagiri factory in favour of a buyer at Surat and, therefore, the said invoices is not admissible. The ground taken in the order in appeal, requiring physical seggregation or sending intimation under Rule 173H or 173L are not alleged in the show-cause notice. Therefore, the above findings contained in the order of the Commissioner (Appeals) which go beyond the scope of the show-cause notice cannot be sustained. So far as the basic objection itself is concerned, it is now a well settled legal position that, any defect in the invoice can be condoned, as long as, the critical particulars relating to payment of duty, use of the inputs in the manufacture of final goods and the clearance of the finished goods on payment of duty are not disputed. There is no allegation that the goods are non-duty paid or that these have not been used in the manufacture of finished goods. Therefore, consequent to diversion of goods from Surat to Pune, the invoice only needed appropriate correction, and in the absence of such correction credit cannot be denied.

5. Therefore, the appeal succeeds and the same is allowed and consequently the impugned orders of the lower authorities are set aside.