

Cce Vs. D.C. Polyster (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-03-2003

Reported in : (2004)(176)ELT396Tri(Mum.)bai

Judge : M T K.D.

Appellant : Cce

Respondent : D.C. Polyster (P) Ltd.

Judgement :

1. The refund claim of Rs. 5,24,345/- was sanctioned to the respondents under Rule 57F(13) of the Central Excise Rules 1944, whereas under the same order, the claim for Rs. 88,602/- was rejected. The learned Commissioner (appeals), set aside the order denying the claim for Rs. 88,602/- 2. In the instant appeal, it has been pleaded that out of the said amount of Rs. 88,602/-, an amount of Rs. 75,263/- referred to the accumulation of Modvat credit with reference to the duty paid on inputs under Additional Duty of Excise (Textiles & Textile Articles) Act 1978.

The learned Commissioner (Appeals) had erred in holding that the additional duty of Excise (T & TA) is also refundable on the export of the final product by the assessee on which such duty was not leviable, when cleared for home consumption.

3. In the appeal, it has been stated that, Notification No. 24/95 CE(NT) 20/5/94 as amendment, issued under Rule 57A, provided that, additional duty of (T & TA) availed in respect of the inputs, shall be utilized only towards payment of duty of excise leviable under the Additional Duties of Excise (T & TA) Act 1978 or as the case may be, on the inputs as such if such inputs are permitted to be cleared under Rule 57F of the said rules. Hence, the second proviso in Notification No. 24/95 CE(NT) very much emphasizes the intention of the government, not to part with the duty collected under the head of the additional duty of excise (T & TA).

4. It is also pleaded that, as per Rule 57F (13), the refund under the said rule is admissible only if, the final finished goods are capable of being cleared for home consumption, utilizing the accumulated modvat credit availed on inputs equivalent to the duty paid under the Additional Duties of Excise (T & TA) Act.

5. It is pleaded that the learned Commissioner (Appeals) has failed to appreciate this legal position in permitting the refund of the entire amount.

6. I have carefully considered the provisions contained in the revenue's appeal and find full merit therein. The terms of the conditions stipulated under Rule 57F(13) can be read to permit the refund of only that duty which can be permitted for utilization for discharge of final product duty, at the point of clearance of the products for home consumption. In cases where payment of such duty on final product by debit from the A & TA account is not possible for the reason that finished goods are not subjected to the duty under T & TA Act, there can not be any question of even permitting taking of the said credit. In other words, it is for the respondents to demonstrate that if the finished goods were to be cleared for home consumption, the duty under T & TA was permitted to be debited and, only in that situation, the accumulation occurs, and the refund can be permitted under Rule 57F (13). Raising the credit entry under the category T & TA itself was irregular in the absence of any liability on final goods under T & TA Act. The grounds cited by the learned commissioner (Appeals) to permit the refund are totally without any legal basis. It is a well settled law that, when the finished products are fully exempt from any duty, the modvat chain breaks and the duty suffered by the inputs has to be compensated on exports, through mechanisms other than modvat for example

alteration in rates of drawback on exempted article such as Utensils, garments etc. The cash refund of input duty paid under T & TA Act, cannot be permitted as analysed above.

7. Therefore, I hold that the impugned order in appeal is not sustainable.

8. Accordingly, I allow the revenue appeal and set aside the impugned order passed by the commissioner (Appeals).

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