The Commissioner of Central Vs. Epc Irrigation Ltd.

The Commissioner of Central Vs. Epc Irrigation Ltd.

SooperKanoon Citation : sooperkanoon.com/33427

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-12-2003

Judge : S T S.S.

Appellant : The Commissioner of Central

Respondent : Epc Irrigation Ltd.

Judgement :
1. Respondents are manufacturer of HDPE/LDPE pipe, etc. They availed modvat credit. They cleared waste and scrap of the pipes for granulation under Rule 57F(3) to the job workers. The lower authority confirmed the demands under Rule 57F(5) on such clearances.

Commissioner of Central Excise (Appeals) set aside the confirmation orders finding that scraps i.e., off-cuts of rejected pipes are of single thermoplastic material and are to be treated as removal of the primary form on inputs itself since they were not classified as scrap/waste under 3915.00 to allow duty under Rule 57F(4). Revenue is aggrieved on this, they have taken the grounds - ii) During 1996-97, inputs were not defined and these goods were not declared.

iii) Note 7 relied upon by the Commissioner (Appeal) to denying the credit is not relevant for clearance under Rule 57F (3), (4) & (5).

2. Considered. The processing of inputs is resulting in the efforts/rejected pipes, which are being called as waste by the department and primary form of inputs.

They are being sent for granulation and received back and reused. That is not being doubted. In that view of the matter and the finding of the Larger Bench in the case of Wyeth Laboratories Ltd., (2000 (120) ELT 218-LB) wherein the majority held that word 'waste' used in Rule 57F(4) has to be understood only to apply such inputs which are not desired to be used any further for use in or in relation to the manufacture of the final product and held that it is for the assessee to opt for the route of clearing it on payment of duty is sending it to job workers to be returned back for reuse and the option does remains irrespective of change in favour of input due to processing. Following the same, no merits are found in the demands made.

3. Consequently demands are not upheld. Appeal is disposed off in these findings as dismissed.