Commissioner of Central Excise Vs. Valson Polyester Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-12-2004

Reported in : (2004)(94)ECC134

Judge : A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Valson Polyester Pvt. Ltd.

Judgement :

1. This is a Revenue's appeal against the order of the Commissioner (Appeals) who set aside the order of the lower authority. Cross objections were filed by the respondents, M/s. Valson Polyester Pvt.

Ltd., Vapi.

2. The mailer pertains to switching over from proforma credit to modvat credit The respondents manufactured texturised yarn of polyester falling under chapter sub-heading 5402.32. The unit was availing of proforma credit under Rule 56A. Proforma credit scheme was withdrawn with effect from 20.5.94 and Modvat scheme was instructed under Rule 57A. The respondents however continued to work under proforma credit scheme as they were not aware of the charge till 31.5.1994. Thereafter they filed declaration under 57G as required under the new scheme and under the transitional arrangement sought to utilise the credit available to them as on 24.5.1994 for payment of duty under Modvat scheme. The

Assistant Commissioner in his order denied the same demanded in all Rs. 6,71,943/- towards duty by disallowing the proforma credit to the time of Rs. 3,00,322/- and also Rs. 3,71,621 utilised towards payment of duty for the period 20.5.94 to 31.5.94 (Total Rs. 6,71,943) and imposed equal amount of penalty.

3. The Commissioner (Appeals) after going through the records gave the following findings: "D3 intimation were received on 24,5,94 and 27.5.94 and permission to avail proforma credit was issued on 27.5.94. Therefore the plea of (he appellant that even the department was not aware of the issuance of notifications, deleting benefit of Rule 56A and granting the benefit of Rule 57A on 20.5.94 was not known in the trade and the officers. The essential procedure between 56A and Rule 57A is the same in fact Rule 56A provides more stringent control of intimations to the officers and their verification visits. Therefore the credit availed in the registers after such intimation and verifications can not be doubted. In this case a declaration has been filed on 31.5.94 under Rule 57G and a condonation for the delay should have been considered by the JAC and credit should have been allowed under Rule 57H after condoning such delay on receipts of the inputs and the balance as on 19/20.5.94 in the proforma credit from 20.5.94 to 31.5.94. When proforma credit was withdrawn. He is silent about the letter dated 27.5.94 issued to avail proforma credit, and also regarding the application given for condonation of delay in filing the declaration. In the facts and circumstances of this case, when the AC is directing the party to avail proforma credit under Rule 56A on 27.5.94 when he should have advise them to avail proforma credit under Rule 56A on 27.5.94 when he should have advise them to avail modvat credit under Rule 57A. I do not find any reason not to condone the delay in opting for Rule 57A and grant them the credit for the inputs received immediately preceding the date of application for modvat with effect from 20.5,94. Since the facts of the receipt of inputs are not being question there is no difficulty in gram of transfer of credit from 56A register to 57A register. " "The benefit of proforma credit under Rule 56A was extended to units manufacturing texturised yarn of chapter heading No. 5403.00, however, the said benefit of proforma credit was abolished and it was brought under Rule 57A of Modvat scheme vide Notification No. 24/94-CE dated 20.5.94 and as such the existence of Rule 56A was no more w.e.f. 20.5.94.

In the instant case the assessee had taken proforma credit amounting to Rs. 3,00,322/- and also utilised the amount of Rs. 3,71,621/- from the proforma credit account for payment of duty on finished product for the period from 20.5.94 to 31.05.94 under Rule 56A, though Rule 56A was not in existence w.e.f 20.5.94 after issue of Notification No. 24/94-CE dated 20.5.94 diverting the scheme of proforma credit into Modvat scheme under Rule 57A of Central Excise Rules, 1944. Over and above, the assessee instead of availing benefit as was available under Rule 57A of Central Excise Rules, 1944, w.e.f. 20.5.94, continued availing proforma credit under Rule 56A, as can be seen from their intention of filing the declaration as required to be filed under Rule 57G(I) as late as on 31.05.94 with the jurisdictional Assistant Commissioner before switching over to the new system. Therefore, the credit taken for Rs. 3,00,322/- during the period from 20.5.94 to 31.05.94 is not entitled neither under Rule 56A nor 57A of Central Excise Rules, 1944. " 5. Heard the Ld. DR and went through the cross objections and perused the records.

6. In the grounds of appeal the Revenue does not meet the observations made by the Commissioner (Appeals). The appeal seemed to have been filed in a routine manner as is often observed with Commissioner of Central Excise, Surat. The Commissioner (Appeals)'s observation was that the department was permitting proforma credit even on 27th May (by which time the Modvat scheme has come into force) while holding that the scheme of proforma credit was no more in vague. This act of the department is enough to say that the department itself was not sure which scheme was in vogue after 24th May. The respondents have rightly argued that their application under 57H should have been acceded to after condoning the delay in filing such an application. I observe that the department's appeal against the order of the Commissioner (Appeals) is selective in its approach ignoring what is against them. This is unacceptable. The Commissioner (Appeals) rightly set aside the order of the original authority. For the reason set out in the order-in-appeal and the pleas adducted in the cross objection the appeal of the department is rejected.

7. The appeal and the cross objections are disposed of, rejecting the appeal of the Revenue.