Bharat Litho Co. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-23-2004

Reported in : (2004)(94)ECC597

Judge : P Chacko

Appellant : Bharat Litho Co.

Respondent : Cce

Judgement :
1. During the relevant period (November, 1992 to February, 1993), the appellants were engaged on the manufacture of Plastic Cabinets and Parts of Refrigerator and were availing the benefit of Modvat credit on inputs used in or in relation to the manufacture of final products. In their declaration dated 27.3.92, filed w.e.f. 1.4.92, under Rule 57G of the Central Excise Rules, 1944, they had declared a number of final products including "Plastic Parts of Refrigerator" falling under sub-heading 8418 of the CETA schedule and had also declared all the inputs intended to be used in the manufacture of such final products.

Polystyrene and certain other inputs including ABS resin were among the inputs declared in respect of the Plastic Parts of Refrigerator.

Polystyrene also figured in the list of inputs for most of the other final products declared by the party. During the aforesaid period, the appellants took Modvat credit of over Rs. 5 lakhs on Polystyrene and used the same for payment of duty on their final products. The original and first appellate authorities disallowed this credit, holding that there was no evidence of Polystyrene having been actually used in or in relation to manufacture of the final products in respect of which the credit was utilized. In the present appeal, filed against the order of the lower appellate authority, the appellants have contended that, under rule 57F (3), as the rule stood at the material time. It was not obligatory for them to establish one-to-one correlation between inputs and final products for Modvat purpose. In support of this contention, ld. Counsel today relies on the following decisions:- Ld. Counsel has pointed out that the lower authorities insisted that a statement showing utilization of inputs in or in relation to the manufacture of final products be filed to prove that Polystyrene had in fact been so utilized during the period of dispute. In this connection, Counsel has particularly relied on the Tribunal's decision in Nisha Conductors (supra), wherein it was held that there was no requirement of filing of any statement of product wise utilization of credit. under Rule 57F (3) or under any other provision. Counsel submits that the utilization of the inputs in question is an admitted fact and, further, that the relevant rules did not obligate the appellants to show that the inputs had actually been utilized in or in relation to the final products in respect of which the credit was utilized. According to ld.Counsel, the relevant rules did not call for one-to-one correlation of input and final product for Modvat purpose.

2. Ld. SDR opposes the above argument and relies on the Board's Circular No. 27/90-CX 8 dated 2.5.1990 to contend that one-to-one correlation of input and final product was an inbuilt requirement of Rule 57A at the material time. The DR points out that, in the case of Nisha Conductors, which pertained to a period prior to 1990, the Tribunal had no occasion to examine the Circular.

3. I have examined the rival submissions. On a perusal of the orders of the lower authorities, I find that the Revenue has no case that the Polystyrene was not used in or in relation to one or the other final product of the appellants. Rule 57G declaration filed by the party for the relevant period had listed out numerous final products, among which many required Polystyrene as input. The credit of duty paid on Polystyrene was utilized for payment of duty on Plastic Parts of Refrigerator. Polystyrene was one of the inputs declared for this final product. It

also figured as input for some of the other final products declared by the party. That one-to-one correlation between input and final product was not a requirement under Rule 57F (3) is, by now, a settled position. The decisions cited by the ld. Counsel are to this effect. The decisions overruled the view taken by the Board in the Circular relied on by the DR. Ld. DR has argued to the effect that the decision in Nisha Conductors (supra), having been rendered in respect of a period prior to 1990, may not be good law in view of the Board's Circular. But, if there is any conflict between Board's Circular and decision of the Tribunal, the latter must prevail unless it is disapproved by a competent higher judicial forum. Apart from this, I find that, in Nisha Conductors (supra), the Tribunal held, with reference to various Modvat Rules, that an assessee availing the benefit of Modvat credit was not required to show that the input had been utilized in or in relation to the manufacture of the particular final product in respect of which the credit was utilized. The underlying principle is that one-to-one correlation of input and final product is not a requirement for availment of Modvat credit. I find that the ground raised by the lower authorities for denying the credit to the appellants is not sustainable. The Modvat credit in question is admissible to the appellants. The impugned order is accordingly set aside. The appeal stands allowed.