

Saraya Distillery Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-25-2004

Reported in : (2004)(95)ECC162

Judge : P Chacko

Appellant : Saraya Distillery

Respondent : Cce

Judgement :

1. The appellants, during the material period, were engaged in the manufacture of country liquor, Indian Made Foreign Liquor (IMFL), Rectified Ethyl Alcohol and Denatured Ethyl Alcohol, among which only the last mentioned product was excisable. They claimed the benefit of Modvat credit of the duty paid on molasses (input) for the period 1.3.94 to 20.7.94 without filing the necessary declaration under Rule 57G of the Central Excise Rules, 1944. They filed the declaration only on 27.8.94, with an application for condonation of delay. The department, in a show-cause notice issued on 21.12.94, alleged that the delay was not condonable and that the Modvat credit claimed was not supported by documentary evidence. The department accordingly proposed to deny the above credit to the appellants under Rule 57-I and to impose a penalty on them under Rule 173Q of the above Rules. The adjudicating authority allowed the claim of Modvat credit to the extent of Rs. 7,19,820, against which the department filed appeal with the Commissioner (Appeals), and the Commissioner (Appeals) ordered as under: "In view of the above the order-in-original is set aside and the case is remanded to Asstt.

Commissioner, Central Excise, Gorakhpur for de novo adjudication. He is directed to adjudicate the case afresh after correctly providing the scientific basis on which actual quantity of molasses used ultimately in the manufacture of Ethyl Alcohol is arrived at." 2. Pursuant to the above order of the Commissioner (Appeals), the original authority passed order dated 30.11.97, the operative part whereof reads as under: "I reject the application dated 27.8.94 filed by M/s. Saraya Distillery, Sardarnagar, Gorakhpur under Rule 57-G (5) of Central Excise Rules, 1944 and disallow the credit amounting to Rs. 9,29,189.50 as claimed by them in their aforesaid application, for reasons discussed above. If the same has already been taken by them, I demand the same under Rule 57-I of CER, 1944." Against the above order of the Asstt. Commissioner, the party preferred appeal to the Commissioner (Appeals). In that appeal, they challenged the rejection of delay condonation application as well as the denial of Modvat mcredit. They, however, did not plead that the order passed by the original authority was beyond the scope of the remand order of the Commissioner (Appeals). The Commissioner (Appeals) dealt with both the issues, i.e. whether the delay of declaration was condonable and whether the Modvat credit was admissible, and passed the order which is impugned in the present appeal of the assessee. The impugned order has upheld the decision of the original authority.

3. Ld. Consultant for the appellants submits that it was not open to the original authority to examine the question whether the delay of declaration was condonable or not inasmuch as the remand order of the Commissioner (Appeals) had settled that question. I have to reject this plea of the consultant at the outset for the reason that this plea was not raised before the lower appellate authority. The next submission of the Ld. Consultant is that the lower authorities ought to have condoned the delay of declaration on the ground that the assessee was not aware of the statutory requirement of such a declaration during the relevant period. Ld. DR has opposed this argument. He has submitted that ignorance of law is no ground for condonation of the delay.

4. Having examined the records, I note that, apart from the plea of ignorance of law, no reason whatsoever was stated by the party at any stage before, for condonation of the delay. In the present appeal also, I have not come across any

(sic) reason for condonation of the delay of declaration. Accordingly, I uphold (sic) decision of the lower authorities on the question whether the delay of (sic) declaration was condonable. As the credit in question was taken (sic) filing declaration it is not admissible to the party. The impugned order (sic) and the appeal is dismissed.

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