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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-31-2004

Judge : P Chacko

Appellant : Vikram Plasticizer Inds.

Respondent : Commissioner of Central Excise

Judgement :

1. The appeal is against denial of modvat credit of Rs. 15,319/- on 2-ethyl hexanol (hereinafter referred to as "the said input") to the appellants by the lower appellate authority.

2. Apart from the grounds of the appeal, some written submissions are seen to have been placed on record by the authorized signatory of the appellants. It appears, they have waived the right to be heard in person. I have examined the grounds and the written submissions. I have also heard the learned D.R.3. The credit in question was taken some time in August, 1987 on the basis of a gate pass dtd. 06/08/1987. A show-cause notice was issued on 01/07/1989 to the party proposing to disallow the credit on the ground that it had been taken without requisite declaration. The allegation was that the said input was a chemical different from 'octanol' named in the declaration filed by the party. The original authority allowed the credit to the assessee, holding that the proposal in the Show Cause Notice to recover the duty equivalent to the credit under Rule 57I was hit by time bar. Aggrieved by the decision of the Original Authority, the department preferred an appeal to the Collector (Appeals) and the latter set aside the order of

the lower authority after taking the view that the limitation prescribed under Rule 57I (as amended on 06/10/1988) was not applicable to the period of dispute. The Collector (Appeals) disallowed the credit to the party. Hence the present appeal.

4. On the limitation issue, the appellants have heavily relied on the Tribunal's decision in the case of C.C.E. v. Ashim Paper Products (Pvt.) Ltd. - 1990 (50) E.L.T. 120 (Tribunal) whereby it was held that the time limit of six months under the amended Rule 57I was applicable even prior to 06/10/1988 where the elements of suppression, wilful mis-statement, fraud etc. were not alleged. The appellants have not filed a copy of the Show Cause Notice, which alone can show whether suppression, wilful mis-statement or fraud had been alleged against them by the Department. I am, therefore, unable to follow the cited case law. What appears from the order-in-original is that the credit was proposed to be denied to the assessee on the ground of non-filing of declaration in respect of the said input. It appears, the assessee had declared "octanol" instead of 2-ethyl hexanol. These are organic compounds. A reference to the Condensed Chemical Dictionary indicates that 2-ethyl hexanol has the same number (eight) of Carbon atoms as in Octanol. Chemical literature further indicates that, in common nomenclature of organic compounds, 2-ethyl hexanol is one of the isomeric octanols. Thus the party's declaration was not that far removed as has been held by the lower authorities. This apart, question arises as to whether the substantive benefit of Modvat credit on input could be denied to a manufacturer of final product on the technical ground of defective declaration where the substantive conditions for such benefit have been fulfilled. The substantive conditions are that the input should be duty-paid and should have been used in or in relation to the manufacture of final product in the factory. The Revenue has no case that the substantive conditions were not fulfilled by the party. The credit has been denied on the sole ground of non-filing of declaration. The facts of the case indicate that this is not a case of non-filing of declaration but one of filing of defective declaration. A Larger Bench of the Tribunal, in the case of Kamakhya Steels (P) Ltd., has held that, in view of Rule 57G as amended by Notification No. 7/99-CE (NT) dtd. 09/02/1999 as clarified by the Board, input credit cannot be denied on the ground of defective declaration or invoice if the party has fulfilled the aforesaid substantive conditions. In the result, the impugned order is set aside and the appeal is allowed.

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