

Multiflex Lami Prints Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-02-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Multiflex Lami Prints Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in these two appeals is the question of excisability of slitting of jumbo rolls of flexible laminated films brought on payment of duty from Mahad factory to the appellants' premises at Silvasa. The lower authorities have confirmed duty demands after coming to a finding that it was the slitting of the jumbo rolls which resulted in the product for which the customers had placed the orders.

2. After hearing both sides for some time, it transpires that the appeals themselves could be decided at this stage of hearing the pre deposit application under Section 35F of the Central Excise Act, 1944.

Therefore, with the consent of both sides, and after waiver of pre deposit requirement, the appeals themselves are taken up for final disposal.

3. After perusal of the impugned order, it is found that the plea of the appellants on the question of the eligibility of Modvat credit of Rs. 1.94 crores as per the Chartered Accountant's certificate, now produced, has been rejected on the

grounds that the proper procedure has not been followed. This rejection cannot be upheld in view of the Tribunal's decision in the case of Bharat Waggon & Engg v. CCE, Pune 2001 (44) RLT 557 (CEGAT-Kol), wherein it has been held that Modvat credit on the duty being demanded on the goods cleared under exemption notification could be granted and adjusted against the demands of duty even though prescribed procedure for availing credit was not followed.

This line of decision has been taken also in the case of Garware Synthetics Ltd v. CCE 2000 (115) ELT 740 (Tri). Therefore, in this case also, before determining the duty which is required to be paid, and the modvat credit eligibility of the duty paid on the jumbo rolls has to be set against the demand made and the demands required to be determined thereafter. This exercise could be only conducted by the Commissioner, who adjudicated the case and was required to do, since a plea for demand for Modvat credit was made before him. The other plea of the appellant before us that they were not heard by the present adjudicator, who has issued the impugned order, and the finding of the adjudicator in the impugned order, that notices for hearing were issued, is not proved on facts, and also be reconsidered and a finding arrived at by the Collector. In any case, on the question of eligibility of Modvat, and its quantum, the adjudicator has to rehear the appellants in the remand proceedings now being ordered. Since the issue is being remanded, no findings have been arrived at on the question of whether slitting amounts to manufacture. The case law and the suggestions made by both sides on this issue can be made before the adjudicator as this issue is left open for the adjudicator to redetermine in the remand proceedings.

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