

Mrf Ltd. Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-29-2004

Judge : M T K.D.

Appellant : Mrf Ltd.

Respondent : The Commissioner of Central

Judgement :

1. The appeal of the appellants is directed against the order-in-appeal Passed by the Commissioner Central Excise (Appeals) whereunder the modvat credit denied to them by the Deputy Commissioner was confirmed.

2. It is revealed that the appellants were availing modvat credit on furnace oil as inputs in terms of Rule 57A. This credit is allowable whether the input is used directly or indirectly. Whether contained in the final product or not. The appellants had used the duty paid inputs (furnace oil) in the manufacture of tyres for Animal Drawn Vehicle (ADV tyres) which are fully exempt from Central Excise duty. They were asked to reverse the credit of duty paid on the furnace oil used in the manufacture of ADV tyres for the period from July 99 to March 2000. The appellants, on referring to the provisions contained in Rule 57CC (5) claimed that the requirement of credit reversal applies only to inputs, which are contained in the final product. Since furnace oil is not contained in the final product i.e. ADV tyres, the credit reversal is not warranted. The Deputy Commissioner, however, on referring to the provisions of Rule 57A and Rule 57C, held that since the final product is exempt, the taking of credit on furnace oil was not permissible.

Hence, the duty demand was confirmed by the Deputy Commissioner, which has been also upheld by the Commissioner (Appeals). Hence the instant appeal.

4. The appellant's case is that in respect of inputs used as fuels, by virtue of Sub-rule (3) of Rule 57C which says that provisions of Sub-rule (2) of Rule 57C shall not apply to inputs used as fuels, the inputs (i.e. furnace oil) in their case being a fuel, Sub-rule (2) shall not apply in this case. The Sub-rule (2) of Rule 57C states that - "Where a manufacturer avails of the credit of specified duty on any inputs and he is engaged in the manufacture of any final product which is chargeable to duty as well as in the manufacture of any other final product which is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty in the same factory, the provisions of Sub-rule (1) shall be deemed to be satisfied only when the provisions of Sub-rule (1) or Sub-rule (5) or Sub-rule (9) of Rule 57CC are complied with, or where goods are exported under bond in terms of the provisions of Rule 13".

5. There can be no disagreement with the appellants that Sub-rule (2) of Rule 57C does not apply to fuels. Having said so, nothing stated in Rule 57C(2) can apply to fuels. In other words, whether credit reversal has to be on actual basis or 8% of the final goods price has to be paid, are not the issue, which are required to be examined. In plain and simple terms for want of satisfaction of conditions contained in Sub-rule (1) of Rule 57C, the credit is not admissible ab-initio.

Hence, the question of recovering the credit etc. or 8% amount under Rule 57CC can not arise. The credit having been illegally taken, the lower authorities were also justified in imposing penalty.

6. Accordingly, I find no merits in the appeal. The same is accordingly rejected.

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