Commissioner of Central Excise Vs. Sterlite Optical Technologies

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-21-2004

Reported in : (2004)(178)ELT486Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Sterlite Optical Technologies

Judgement :

1. The brief facts of the case are that vide an order dt. April 1995 the Assistant Commissioner of Central Excise Vapi, changed the classification list filed by the respondents herein in regards to waste material by classifying under Chapter Heading 85.44, 74.04, and directed the respondents to pay duty as per the tariff duty. The Commissioner (Appeals) upheld the order of the Assistant Commissioner, in appeal before the Tribunal, the impugned order has set aside holding that the scrap is not excisable commodity and it had not been specified in the Central Excise Tariff. On this basis a claim for refund of differential duty of Rs. 31,14,949/- paid under protest on higher rate of duty was directed. The claim was rejected by the Deputy Commissioner on the grounds inter alia that the assessee had availed modvat credit on their inputs which is ultimately went into the waste and scrap cleared on payment of duty while there is no evidence regarding reversal of such modvat credit, and even if refund is admissible the claim is hit by bar of unjust enrichment under Section 11B of Central Excise Act, 1944. The Commissioner (Appeals) set aside the order holding that refund was admissible.

After examining the bar of unjust enrichment, he held that a sum of Rs. 58,497/- and a sum of Rs. 1,728/- was not admissible and that the assessee was entitled to take refund of the remaining amount of Rs. 30,54,724/-; hence this appeal by the Revenue against the grant of this sum of refund.

2. We have heard both sides, we see merit in the contention of the respondents herein that the refund claim is not liable for rejection on the ground that modvat credit was not reversed as there is no requirement that credit of duty is required to be reversed when inputs are contained in waste and scrap, as per the Tribunal's decision in the case of Aarti Drugs Ltd. v. Commissioner of Central Excise, Mumbai -III the decision in Aarti Drugs Ltd. has been followed subsequently in the case of Hi-Tech Carbon v. Commissioner of Central Excise, [2003 (161) ELT 407 (Tri.-Del.)]. As regards the operation of the doctrine of unjust enrichment, we find that the appellant was already examined by the Commissioner (Appeals) and further there is no ground in the revenue's appeal on this aspect. In this view of the matter we uphold the impugned order and reject the appeal.