Cable Corporation Ltd. Vs. C.C.E.

Cable Corporation Ltd. Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/36152

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-05-2004

Judge : R K Jeet

Appellant : Cable Corporation Ltd.

Respondent : C.C.E.

Judgement :

1. This appeal is directed against the Order-in-Appeal bearing No.31/MV/2002 dated 19.2.2002 by which the learned Commissioner (Appeals) has held the finding contained in the order of the lower adjudicating authority and disallowed their appeal.

2. Appearing on behalf of the appellants, learned Counsel Shri D.D.Gwalani submits that since they were using other inputs like copper, aluminium and insulating material along with cylindrical cork floats (input in dispute) they were reversing 8% of the cost of the product on account of modvat credit availed by them on the common inputs used in the dutiable and non-dutiable product, under Rule 57CC of the Central Excise Rules, 1944. He further submits that they had no mala fide intention to evade payment of duty and they paid 8% of the value of the final product, therefore, penalty under Rule 173Q amounting to Rs. 35,000/- has been wrongly and illegally imposed on them. He further submits that they have already paid an amount of Rs. 1,52,440/- which is an amount equal to 8% of the value of the final product.

3. Appearing on behalf of the Revenue Shri Shaikh, learned JDR submits that appellants have taken modvat credit on cylindrical cork floats from the beginning and that this input will be used in the manufacture of exempted final product because this particular item that is "TEM-3" was exclusively meant for Indian Navy and a certificate which is normally obtained from Deputy Secretary, Ministry of Defence is merely a procedural formatlity. Therefore, they should be ordered to pay the amount of modvat credit taken in such input which has been exclusively used in the exempted goods.

4. As regards the amount of 8% which was paid at the time of clearance of the final product, they could get input credit on pro rata basis on the final product "TEM-3". He, therefore, submits that since the input namely, cylindrical cork float has been exclusively used in the manufacture of pre-exempted final product, they should be directed to pay the credit and order of Commissioner (Appeals) in order reversing of modvat credit of Rs. 3,42,990/- and confirming the order of the lower adjudicating authority imposing a penalty of Rs. 35,000/- which is legal and proper may be sustained and their appeal may be rejected.

5. I have gone through the facts on records and have heard both sides.

The appellants have used the input 'cylindrical cork float' exclusively in the manufacture of exempted final product which was supplied exclusively to Navy, therefore, they cannot be allowed modvat credit in view of the bar of Rule 57C ibid, because duty paid goods was used in the manufacture of finished excisable goods which was exempted under Notification No. 64/95 dated 16.3.95. The impugned order is, therefore, sustained as regards the modvat credit of Rs. 3,42,990/- is concerned.

Since the appellants have paid the amount of 8% of the final product, the set-off is required for giving pro rata benefit, otherwise, it would be a case of double jeopardy. Regarding imposition of penalty under Rule 173Q of the Rules ibid, since they have paid the amount of 8% of the value of the final product, mala fide cannot be attribute. I, therefore, set aside the order of the original authority imposing a penalty of Rs. 35,000/- and the impugned order confirming the above penalty. But for this modification, the appeal is otherwise rejected.

Ordered accordingly.