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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-02-2004

Reported in : (2005)(99)ECC23

Judge : S Kang, a T V.K.

Appellant : Scj Plastics Ltd. and ors.

Respondent : Cce

Judgement :

1. These appeals are filed against the common adjudication order passed by the Commissioner of Central Excise.

2. Brief Facts of the case are that the appellants are engaged in the manufacture of PV/PVC/PS Master Batches and inorganic/pigment preparations and were availing the benefit of Modvat credit in respect of inputs used in the manufacture of final product. A SCN was issued for denial of credit of Rs. 1,55,01,539 on the ground that the credit was availed without receipt of the inputs in the factory and some inputs were cleared as such without payment of duty. The appellant filed reply and thereafter adjudicating authority confirmed the demand of Rs. 52,00,000 and imposed penalties on the ground that the appellant have been showing excess consumption on costly inputs in the manufacture of final product to avail higher Modvat credit in respect of the duty paid on these inputs.

3. The contention of the appellant is that the SCN was issued on the ground that credit was taken without receipt of the inputs. There was also allegation in the SCN that inputs were removed as such without payment of duty. The contention is that the adjudicating authority in the impugned order held that the appellant had been showing excess consumption of costly inputs and less consumption on cheaper inputs to avail more Modvat credit and the adjudicating authority on the basis of best judgment disallowed the credit to the tune of 20% in respect of Polyethylene and 5% in respect of Pigments used in the final products.

4. The contention is that the adjudicating authority dropped the allegation raised in the SCN that the appellant had taken credit without receipt of the inputs or the inputs were cleared as such, therefore, the demand is not sustainable and the adjudication order is beyond the scope of SCN.5. The contention of the Revenue is that as per the stock register maintained by the appellant which is showing the actual consumption of the inputs. The appellants were showing excess consumption of the Polyethylene and Pigments, therefore, they are not entitled to the excess credit as held by the adjudicating authority.

6. In this case a SCN was issued for denying the credit of Rs. 1,55,01,539 on the ground that the appellant had not received that inputs. A credit of Rs. 2,98,042 was denied on the ground that the appellant had cleared the inputs as such without payment of duty the adjudicating authority, the adjudicating authority in the impugned order in para 33 framed two issues : (i) whether the inputs covered under the invoices, on which the receipts of the goods was marked differently by the employees had actually been received and used in the manufacture of the final product.

(ii) whether the Private Stock Register resumed from the factory premises is genuine and whether it contained the actual stock position of the inputs.

7. The adjudicating authority in para 53 of the impugned order held that the Department has neither put forth any material nor any other evidence to rebut the submissions made by the party in the absence of which I have no alternative but to accept the argument of the party as correct. This shows that the theory that the goods covered under invoice signed in Hindi or Punjabi were not received in the

factory was not entirely correct and the evidence was not wholly reliable and that one has to fall back on the authenticity of the figures of inputs in the Private Stock Register and other relevant evidence. We further find in para 55 that the adjudicating authority held that this is a case where there is no direct evidence. The Department has not been in a position to show the diversion of the Modvatable inputs as shown consigned to the appellant and duly entered in RG 23 Part I Register.

The adjudicating authority after making comparison of certain major raw materials used in the manufacture of final product come to conclusion that the appellant used 19% to 20% in excess the input Polyethylene.

The adjudicating authority taking into consideration the difference between the private record and the statutory record denied the credit to the tune of 20% in respect of Polyethylene and 5% in respect of Pigments. The adjudicating authority denied this credit based on the best judgment. There is no evidence on record to show that the appellant had not received the inputs or not used in the manufacture of final product. The allegation that the appellant had cleared the inputs as such was also not proved as per the adjudication order.

The stock register on the basis of which adjudicating authority denied the benefit of Modvat credit pertains to only the period of five months. Therefore, on the basis on the entries made in the private record for five months cannot be made applicable for the year 1994-95 to Oct. 96.

8. As the adjudicating authority in the impugned order dropped the charge that the appellant had not received the inputs as shown in the statutory records or appellant cleared the inputs without payment of duty, therefore, on the basis of the stock register which is only for some months, it cannot be held that the appellant had shown higher consumption of some inputs to avail higher credit where the use of inputs in the manufacture is not disputed. In these circumstances, the demand is not sustainable. Hence set aside. The appeals are allowed.

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