

Malwa Industries Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-20-2004

Reported in : (2004)(117)LC994Tri(Delhi)

Judge : A T V.K., P Bajaj

Appellant : Malwa Industries Ltd.

Respondent : Cce

Judgement :

1. The above captioned appeals have been directed by the appellants against the common impugned order-in-appeal dated 10.1.2004 vide which the Commissioner (Appeals) has reversed the orders-in-original of the adjudicating authority who allowed the refund/rebate of the duty to the appellants.

2. The facts are not much in dispute. The appellants are engaged in the manufacture of 100% cotton yarn and cotton denim fabrics falling under Chapter 52 of the CETA. They exported 100% cotton denim fabrics on payment of duty during the period in question (April & May 2001). They had been also availing facility of CENVAT credit under Rule 57-AB and maintained separate account of the credit in the statutory record. They are the time of export of the goods, paid the Additional Excise Duty (AED) from the CENVAT credit register (RG-23A, Part-II). They submitted their claims for the rebate /refund of the duty paid by them on the exported goods. The adjudicating authority allowed the claim through four adjudication orders-in-original. The Revenue challenged those orders and the

Commissioner through the common impugned order, under appeal, has reversed the same on the ground that the AED could not be paid from the Basic Excise Duty (in short BED) CENVAT credit account.

3. The controversy, therefore, in these appeals centres round the question, as to whether the payment of the AED could be made from the CENVAT credit of BED or not. The view taken by the Commissioner (Appeals) is that the CENVAT Credit of BED could not be utilized for payment of the AED. But his view cannot be subscribed being contrary to the provisions of Rule 57-AB(1)(a) of the rules. The said rule is quite clear and unambiguous in wording and permits the utilization of the CENVAT by an assessee for payment of any duty of excise. The duty of excise includes the additional duty of excise also. It is well settled that beneficial provision, has not to be interpreted in such a way that takes away the right given to an assessee, as even observed by the Apex Court in the case of Union of India v. Suksha International & Nutan Gems and Anr.

57-AB(1)(a) has not to be interpreted in a manner which would take away the benefit available there under to the assessee. Moreover, the language of this rule is quite clear and does not debar the assessee from utilizing the CENVAT credit of the BED, for discharging the AED. It is only prior to 1.11.2000 that restriction was placed on such a utilization, vide Notifications No. 5/94 and 21/99, but now, as the language of the above said referred rule stands, it is quite evidence that utilization of the CENVAT credit of the BED can be utilized by the assessee for payment of any duty of excise which includes AED also.

4. The case of CCE, Chandigarh v. Gonterman Peiper (I) Ltd. 2002 (147) ELT 2000, referred to in the impugned order by the Commissioner (Appeals) was decided with reference to the above said Notifications No. 5/94 and 21/99 and as such the observations recorded therein could not be used in the present case.

5. In view of what has been discussed above, it must be held that there was proper payment of duty by the appellants on the exported goods and they are entitled to the refund/rebate of the duty paid by them and the adjudicating authority had rightly allowed their refund claims.

6. The argument of the learned JDR that the appeals are not maintainable before the Tribunal as the issue of rebate is involved, cannot be accepted for the simple reason that the main issue involved in the appeals relates to the utilization of the CENVAT credit of BED for discharge of the AED and the refund/rebate claims are only consequential reliefs claimed by the appellants. Therefore, the appeals before the Tribunal are competent and maintainable.

7. In view of the discussion made above, the impugned order of the Commissioner (Appeals) in all the appeals is set aside and the orders-in-original of the adjudicating authority are restored. The appeals of the appellants are allowed with consequential relief, permissible under the law.

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