

Commissioner of Customs and Vs. Rahul Dyeing and Printing Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-03-2004

Reported in : (2005)(181)ELT40Tri(Mum.)bai

Judge : A M Moheb

Appellant : Commissioner of Customs and

Respondent : Rahul Dyeing and Printing Pvt.

Judgement :

1. This is a Revenue's appeal against the order of the Commissioner (Appeals). The Commissioner has set aside the order of the lower authority with a direction that the refund involved be sanctioned and paid to the appellant. The respondents filed a refund claim for Rs. 3,56,142/- and Rs. 508/- on 10.12.99 being the balance lying in the appellants RG 23A Part-II Register and Personal Ledger Account Register respectively. The application for refund has been filed in form GAR 46.

The accumulated credit lying in RG 23A Part-II can be refunded in case such accumulation has occurred owing to export of goods under bond and the assessee is not in position to utilise the same. The lower authority rejected the claim on the ground that the assessee did not substantiate how he could not have utilised the credit. He also observed that in this case even though the assessee wanted his registration certificate to be cancelled he has not submitted the same for cancellation.

2. The Commissioner (Appeals) held that the refund of accumulated deemed modvat credit availed on inputs used in final products which were exported under bond, and which was not allowed to be utilised for payment of duty on final products cleared for home consumption because of instructions of the department, is admissible under Rule 57F (13) of Central Excise Rules 1944. He relied on the CBEC Circular No.408/41/98-CX dt. 20.7.98, while coming to this conclusion. The Revenue's contention is that the above stated circular should be read with notification No. 85/87 CE(NT) dt. 1.3.97 as amended under which the conditions and limitations are to be satisfied as set out in the Appendix to this notification which, inter-alia, stipulates that; (a) The claims for such refund are submitted not more than once in any quarter in a Calendar year and that (b) The refund shall be allowed only in those circumstances where a manufacturer is not in a position to utilise the credit of the duty allowed under Rule 57A against goods exported during the quarter or a month to which the claim relates.

4. I have perused the impugned order and the order of the lower authority rejecting the refund claim. The facts in this case appear to be that the respondents applied for cancellation of his registration, which only means that he has no further use either for the credit accumulated under Rule 57A or for the balance remaining in his PLA. I do not see how he has not satisfied the provisions of the Notification cited by the Revenue. The order of the Commissioner is legal and proper. The appeal of the Revenue is rejected.

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