

Winsome Spinners Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-09-2004

Reported in : (2005)(118)LC191Tri(Delhi)

Judge : N T C.N.B.

Appellant : Winsome Spinners

Respondent : Cce

Judgement :

1. This appeal is directed against the denial of Modvat credit amounting to Rs. 3,01,976/-. The reason for the denial of the credit is that the appellants had not filed declarations in terms of Rule 57G and 57T of Central Excise Rules.

2. The facts of the case are that the appellant is a manufacturer of cotton and other yarns. It availed Modvat credit of cover Rs. 3.5 Lakhs in respect of several inputs and capital goods. The proceedings were initiated alleging that the credit was not available as the appellants have not filed proper declarations of inputs/capital goods. In adjudication, the Asstt. Collector accepted the appellants' claim in respect of Modvat credit amounting to Rs. 3,01,976/- and rejected the claim in respect of Modvat credit amounting to Rs. 56,664/-. The Revenue filed appeal before the Commissioner (Appeals) objecting to the grant of Modvat credit of Rs. 3,01,976/-. The Commissioner (Appeals) allowed the Revenue's appeal holding that the appellants had not produced any declarations filed with the department and that non-filing of Modvat declaration clearly debar the respondents

from availing any Modvat credit.

3. In the present appeal, the submission of the appellants in respect of the finding of the Commissioner (Appeals) that no declaration was filed in respect of the items in question is that, that finding is erroneous inasmuch as issuance of the show cause notice itself was on the ground that "proper" declarations were not filed and not that no declaration had been filed. During the hearing of the case, the appellant's counsel filed a detailed chart furnishing the details of the declaration, the particulars given therein and the particulars of the inputs and the capital goods received. From a comparison of the goods received with the declarations, it was seen that there was variation in the terminology used to describe the goods in the declarations and in the purchase invoices and also that the classification indicated in the declarations did not tally with the classification indicated in the purchase invoices. The appellants' submission is that it cannot anticipate correctly the various terminologies that would be used by its suppliers nor it can anticipate for certain the classifications that will be adopted by the suppliers and approved by the Central Excise authorities. It was submitted that such variations are no ground for holding that there was no declaration of inputs or capital goods, and for denying the credit. The Id. Counsel for the appellants also relied on the Notification No. 7/99 dated 9.2.1999 and the Circular No. 441/7/99-CX dated 23.2.1999 issued by the Board to the effect that proceedings to deny the credit should be initiated only in cases where credit is being claimed in respect of goods on which duty had not been paid and not for procedural lapses. As against this, the contention of the Id. DR is that the declarations of inputs and capital goods should be in specific terms and in the absence of such description in the declarations, Revenue is right in holding that the goods had not been declared.

4. I have perused the records and considered the submissions made by both the sides.

5. It is clear that the items in question had been declared. The Commissioner, therefore, is in error in holding that there were no declarations under Rule 57G or 57T. The Commissioner's finding was contrary to the allegations in the notice itself, inasmuch as notice proceeded on the ground that proper declarations had

not been filed and not that declarations had not been filed. With regard to the variations in description etc., it is to be accepted that such variation is normal and cannot be the basis for denying the credit. An assessee cannot anticipate all the possible descriptions of its inputs or capital goods and declare them in advance nor it can anticipate all the classifications, erroneous or otherwise. The assessee satisfied the requirement of declarations, if it has declared the goods in some identifiable terms. The variations noticed in the present case are like this: The appellants declared "packaging material". The Revenue has held that this does not cover "paper cones". The appellants declared "mobile-oil for lubrication"; what it received was "Deusol Sup-20W/40" or "mobile gear 2 IT"; it declared "Compressor-ignition 8s various parts" and received "Piston Diam Connecting Rod, Piston Pin Holder of Injection Nozzles.

I am of the opinion that on account of such variation, it is not correct to say that the goods in question have not been declared. There is no case that the credit had been taken in respect of non-duty paid goods or that amounts of credit taken were more than the duty paid. The objection taken can be treated only as nit picking. Such an attitude cannot be upheld and if upheld, would defeat the legislative intent of granting credit so as to eliminate cascading effect of duties.

6. In view of the what is stated above, the impugned order-in-appeal is set aside and the benefit granted under Order-in-Original is restored.

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