

Commissioner of Central Excise Vs. Empire Plastic Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-19-2005

Reported in : (2006)(193)ELT447Tri(Mum.)bai

Judge : S T S.S.

Appellant : Commissioner of Central Excise

Respondent : Empire Plastic Ltd.

Judgement :

1. Assessee, the respondent herein, were availing SSI benefit under notification 8/96 by clearing the goods at NIL rate of duty without availing Modvat Credit. It was noticed that in the months of February 1997, though they had cleared the goods at NIL rate, they had availed credit in the month of January 1997. On instruction of the Range Superintendent, they reversed the entry of credit of Rs. 77550/- under protest on 30/1/02. Subsequently refund claim filed, received in Division Office on 3/5/02, on the grounds that he credit was taken before filing of a declaration under Section 173B & they had not utilized the same for home consumption. The claim was rejected.

"It is not dispute that the duty has been paid under protest. The appellant has submitted a copy of relevant page of RG23 A Pt II which shows an endorsement by the appellant that Central Excise duty amount of Rs. 79550/- has been debited under protest vide entry no 38 dtd 31/1/02. It is further seen that he refund claim was filed within the stipulated time limit before the competent authority. It is seen

that the amount of refund has been denied to the appellant on the ground that the appellant has taken the modvat credit wrongly as they were availing the benefit of nil rate of duty under notification no. 8/96.

Further it is seen that the input invoice were defaced by the Range Superintendent also the appellant was never given any Show Cause Notice regarding non admissibility of modvat credit . Therefore, credit cannot be denied on the ground that the modvat credit availed by them was not admissible. As the appellant has reversed the modvat credit under protest the same should be regularized by issuing a show cause notice for demanding or reversing the wrongly availed modvat credit which was not done by the department, therefore, the appellant has entitled to get the refund refund of amount reversed by them under protest." In the instant case, the assessee had availed benefit of notification no 08/96/CE dtd 23/7/96 (as per entry no 08 of GE -66) for their finished goods falling under Ch.S.H.No 3923.90 and cleared finished goods at NIL rate of duty. The assessee is not entitled to get both benefit i.e. availing and accumulating of Modvat credit and clearing their finished goods at NIL rate of duty uner notification no 08/96/CE dtd 23/7/96 even if they had filed declaration under Rule 173B of erstwhile Central Excise Rules, 1944 claiming the benefit of notification no. 8/96/CE dtd 23/7/96 since if they claim the benefit of a particular exemption notification they also under take to abide by the terms of the exemption notification with harmonious interpretation of relevant provisions of law. (Rule 57C/57CC) of Central Excise Rules, 1944 in this case) The contention of the assessee, that they have taken modvat credit during the clearance of exempted goods at NIL, rate of duty and not utilized modvat credit, is not acceptable since exemption benefit to the goods cleared at NIL rate of duty under notification no 8/96/CE dtd 23/7/96 is not available to them if they are availing modvat credit on their inputs. Moreover, the manufacturer is permitted to manufacture exempted as well as dutiable products simulataneously provided a separate accounts are maintained for both category of above said products right from raw material stage to finished stage, but the assessee has failed to maintain such separate accounts for both category of the products right from raw material stage to finished stage with sole intention to evade Central Excise duty." 3. When the matter was called, none appeared for the Respondents.

Heard the Id. DR, considered the matter and it is found - (a) the credit availed & taken in register has to be objected & not allowed, if held to be not eligible, by issue of a notice. That appears to be not done in the period prescribed. Therefore there is no infirmity in the order of Ld. CCE(A).

(b) The grounds taken by Revenue, do not induce us to upset the order of the CCE(A).

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