

BhavIn Textiles Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-19-2005

Judge : T Anjaneyulu

Appellant : BhavIn Textiles

Respondent : Commissioner of Central Excise

Judgement :

2. The assessee is in appeal for denial of refund claim under Rule 57F of the Central Excise Rules, 1944 for accumulated deemed Modvat credit for Rs. 1,58,793/- which remains in balance in their deemed credit register during the course of the exports under bond during the quarter October 98 to December 98.

3. The Commissioner of Central Excise & Customs (Appeals), Surat, by his impugned order denied the refund claim for non-fulfilment of condition 6 of Notification No. 85/87-C.E., dated 1-3-87, which reads as under :- The refund shall be allowed only in those circumstances where a manufacturer is not in a position to utilize the credit of the duty allowed under Rule 57A against the goods exported during the quarter to which the claim relates.

The relevant period is October 98 to December 98, during which the credit is accumulated.

4. The Id. Counsel for the appellants contends that during the quarter ending, the compounded levy scheme was introduced by 16th December, 98, as such they

have paid the duty from PLA. Further, it is submitted that even before the introduction of the system, the concerned officers were pressurizing to pay the duty from PLA for want of revenue in cash.

Therefore, the assessee could not utilize the credit of the duty during the said quarter. The observation of the Commissioner (Appeals) that the appellants could have utilised the Modvat credit accumulated in the duty credit register, but the clearances for home consumption or for export instead of paying duty from PLA is not at all reasonable and satisfactory. In the circumstances of the case, it is obvious that composite levy scheme was introduced even before the expiry of the quarter, as such the party was obstructed from utilizing the deemed credit and on the other hand, the Department was pressurizing the manufacturers to pay the duty from PLA. Though such demand as canvassed by the authorities concerned even prior to the introduction of the compounded levy scheme is off the record, I have no reason to disbelieve the statement made by the Id. Counsel for the appellants.

The fact remains that prior to the introduction of compounded levy scheme, the duty was paid in PLA, which is not disputed. It is borne out by the record during the said quarter the assessee has paid the duty through PLA to the tune of Rs. 5,88,376/-, whereas deemed credit to the tune of Rs. 1,58,793/- payment of duty through PLA is now where advantageous to the assessee. Thus adjustment of the same through the deemed credit. Therefore, the observation made by the Id. Commissioner (Appeals) is not based on sound principle of law and does not stand to the reason. Accordingly, appeal is allowed.

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