

Raymond Limited Vs. Cce

Raymond Limited Vs. Cce

SooperKanoon Citation : sooperkanoon.com/40766

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-11-2005

Reported in : (2004)(177)ELT276Tri(Mum.)bai

Judge : S T T.V.

Appellant : Raymond Limited

Respondent : Cce

Judgement :

1. The appellants, M/s. Raymonds Ltd., are manufacturers of woolen fabrics which they exported as well as sold in the local market. They were availing CENVAT Credit under Rules, 2001/2002. The appellants filed an application before the lower authorities claiming refund of Rs. 6,92,766/-being the Additional Excise duty (T&TA) paid on inputs used in the manufacture of final product which were cleared under bond.

The lower authorities vide Order-in-Original dated 18.2.2003 rejected their claim on the following grounds: i) The Additional Excise duty (T&TA) paid on the inputs are not specified duty, ii) With regard to refund claim filed by them a portion of which was considered barred by time specified under Section 11AB of the Act.

Aggrieved by the Order-in-Original they filed an appeal before the Commissioner (Appeals), who rejected their appeal finding no reason to interfere with the Order of the lower authorities. Aggrieved by the said order the appellants filed the

present appeal.

2. Learned Advocate refers to Rule 3(1) of the CENVAT Credit Rules, 2002, Clause (iii) which reads as follows: A manufacturer... shall be allowed to take credit on Additional Excise duty under Textile & Textile Articles Act, 1978.

He also argues that notice the provisions of Rule 5 restricts the refund only to the extent of excise duty paid on inputs used in exported goods. According to him, it is a clear case for refund.

3. In this context, he also refers to Section 11B(2), proviso 1(c) which excludes refund of Credit of duty paid on excisable goods used as inputs from being credited into the Consumer Welfare Fund. According to the learned Advocate Rule 5 has prescribed a separate mechanism through notification and hence cannot be read with Section 11B and therefore, the conditions prescribed under Section 11B will not be applicable in terms of refund claim under Rule 5.

4. Learned Advocate has relied upon the Tribunal's Order reported at 2004 (176) ELT 471 (T) in the case of Commissioner of Central Excise, Mumbai-II v. D.C. Polyesters Pvt. Ltd. which has clearly held that refund of balance in credit would be eligible even of Additional Excise Duty (T&TA), since they have exported larger quantities of yarn in export than clearances for home consumption on debits of that duty and balances in accounts cannot be utilized. In this order the Tribunal has also referred to Board's Circular No. 701/17/2001-CX., dated 12.3.2003 which provides that such credits could be granted as refunds under CENVAT scheme. Learned Jt. C.D.R. however, reiterates the findings of the lower authorities.

5. I have examined the case record and heard both sides. I am of the view that in the light of Rule 3 of CENVAT Credit Rules, 2002 the appellants were eligible for refund in respect of Additional Excise duty suffered by them. I, therefore, set aside the impugned Order of the Commissioner (Appeals) and also that of the original authority and direct the jurisdictional Asst./Dy. Commissioner to re-examine the whole matter in the light of these observations and consider the grant of refund as per law taking into consideration the case laws referred to by the Appellant. The appeal is disposed of accordingly.

