

Advance Lamp Components (P) Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-20-2005

Reported in : (2006)(108)ECC94

Judge : Author: M Ravindran

Appellant : Advance Lamp Components (P) Ltd.

Respondent : C.C.E.

Judgement :

1. When the matter was called out for stay I observe that the question involved in this matter is in short compass. Since the question involved in this case is in short compass I take up the appeal itself for disposal with the consent of both the sides, after granting stay and waiving the condition of pre-deposit.

2. Learned Advocate submits that they received the rejected material in their factory on 21.8.1998 and filed D-3 declaration for availing the benefit of Rule 173L of the Central Excise Rules, 1944. There was a correspondence from the Range Suptd. to them to produce some documents which were not available with the appellants. The appellants then filed Modvat declaration on 12.2.1999 for availing Modvat Credit on the rejected goods received back from their purchaser. They took the Credit on 13.2.99. The department issued a show cause notice on this action and on adjudication of the said show cause notice adjudicating authority confirmed the demand and imposed equivalent penalty on the appellants. On an appeal the Commissioner (Appeals) also upheld the Order. It is the contention of

the learned Advocate that when there are two options available with the manufacturer he can explore the possibility of any one but the appellants did not avail the benefit of both options.

3. Learned D.R. on the other hand submits that the appellants initially went for Rule 173L of Central Excise Rules and subsequently changed the stand and wanted to avail the benefit of Modvat under Rule 57A/G which is not permissible.

4. Considered the submissions of both sides and perused the record. I find that the appellants had filed Modvat declaration under Rule 57G to the authorities on 12.2.99. In the said Modvat declaration in the Note they have mentioned "the delay is condonable, if necessary," I find that the adjudicating authority has not considered the whole issue from the point of view of Rule 57G(10). The said Rule 57G(10) as it stood during the relevant time is as under: The assistant Commissioner shall not condone the delay unless he is satisfied that: (i) the inputs were received in the factory not before a period of six months from the date of filing of such declaration; (ii) the amount of duty for which credit is sought has actually been paid on such inputs; and (iii) the inputs have actually been used or are to be used in the manufacture of final products.

I find that the lower authorities have not considered Rule 57G(10) in its broad prospective and stuck themselves to the procedural wrangles under Rule 57G(9) that is to say they did not consider the appellants' case as fit enough since the appellants did not prefer application for condonation of delay under Rule 57G(9).

5. I find that the law is settled in this case by the Larger Bench of this Tribunal in the case of Kamakhya Steel Ltd. v. CCE, Meerut 2000 (40) RLT 575 (CESTAT) wherein it is held that if there is a conclusive evidence that duty liability on the inputs is discharged, documents evidencing payment of duty is available and if the goods are received and consumed in the factory all other procedural irregularities could be condoned by the Asst. Commissioner.

6. In view of the above findings and the Larger Bench's decision I find that the impugned Order deserves to be set aside. Accordingly, I set aside the impugned Order and allow the appeal by way of remand to the original authority to consider

the whole issue afresh after giving an opportunity to the appellants to be heard in person.

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