Commissioner of Central Excise Vs. S.B. Reshellers Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-10-2006

Judge : A T K.K.

Appellant : Commissioner of Central Excise

Respondent : S.B. Reshellers Pvt. Ltd.

Judgement :

1. The short point involved in this appeal is that the respondents have taken re-credit of wrongly paid 8% amount under Rule 57AD paid by them on sugar mill rollers repaired and cleared by them.

2. The learned S.D.R. submits that the Commissioner (Appeals)'s order allowing such re-credit is not correct as in such cases the assessee was required to file a refund claim as there are no provision to take re-credit in Central Excise law. He cited Supreme Court decision in the case of Mafatlal Industries Ltd. 1997 (89) ELT 247 (SC) wherein it was held that all refund claim ought to be filed under and in accordance with Section 11B and under no other provision. Tribunal decision in the case of Preena Cables Pvt. Ltd. 2004 (168) E.L.T. 120 was also referred to wherein credit availed earlier was reversed by the appellants under protest and Range Superintendent informed about such reversal it was held that appellants is not entitled to score off the reverse entries and refund claim ought to have been filed by the appellant. Similarly in the case of Albert David Ltd. 2004 (168) ELT 462 (T-LB) it was held that when appellable order is not challenged, then such orders cannot be questioned by filing a refund claim. Reference was also invited to the

Tribunal decision in the case of Century Rayon v. C.C.E., Mumbai wherein the credit was denied by the jurisdictional superintendent in respect of inputs contained in the exempted intermediate Modvat product and the assessee was held to be not entitled to take re-credit on his own good if for subsequent period such credit was allowed.

3. The learned advocate for the respondents referred to the decision of Priya Blue Industries Ltd. v. Commissioner of Central Excise and Customs, Rajkot wherein the Tribunal has held that nature of payment under Rule 57CC is not in the nature of payment of duty through Modvat credit and therefore neither the rules relating to Modvat credit nor Section 11B of the act will apply to this payment.

The learned advocate also referred to the Tribunal decision in the case of Suparna Chemicals Ltd. v. C.C.E. Mumbai 2006 (72) RLT 180 (CESTAT-Mum) wherein it was held that once the credit is found to be admissible the assessee can take the credit on his own if the same was incorrectly reversed by them on export clearance.

4. Considering the submissions made by both the sides. I find that the decision of the Apex Court and the Tribunal decision in the case of Preena Cables and Albert Devid are not relevant to the present circumstances of the case as the facts were different. The Tribunal decision in the case of Century Rayon was on a different footing as in that case the credit was not allowed by the Superintendent and therefore the appellants could not have taken the same on its own.

5. Facts of the present case are covered by the CESTAT decision in the case of Priya Blue Industries wherein it has been held that reversal of credit under Rule 57CC is not payment of duty through Modvat credit and therefore provision of Modvat and Section 11B are not applicable. In such cases there is no irregularity in the assessee taking the credit on its own.