

Hind Spinners Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-23-2006

Reported in : (2006)(111)ECC523

Judge : S Kang, Vice

Appellant : Hind Spinners

Respondent : C.C.E.

Judgement :

1. The appellant filed this appeal against the order-in-appeal passed by the Commissioner(Appeals). The appellants are engaged in the manufacture of Polyester Yarn, Polyester Blended Yarn. Modvat scheme made applicable in respect of the goods manufactured by the appellant w.e.f. 1.3.94. The appellant filed the necessary declaration under Rule 57G of Central Excise Rules for claiming duty credit on inputs on 4.3.94. The revenue denied the credit in respect of the inputs which were received from 1.3.94 to 3.3.94 on the ground that the credit was availed without filing any declaration. Another credit was also denied under Rule 57H of Central Excise Rules on the ground that the credit is available in respect of the inputs which were in stock and which contained in the final product as the amount in dispute is in respect of inputs contained in the process loss, therefore, the benefit has been denied.

2. The contention of the appellant is that they had filed necessary declaration for availing the benefit of credit on 4.3.94. The contention is that now Rule 57G has

been amended by Notification No.7/99-CE dt.9.2.99 to the effect that credit shall not be denied on the ground that the declaration does not contain all the details required or the manufacturer fails to comply with any other requirement under Sub-rule-I and this issue has come before the Larger Bench of the Tribunal in the case of Kamakhya Steels(P) Ltd. v. CCE, Meerut where the issue before the Larger Bench was that assessee can avail credit without filing any declaration. Larger Bench of the Tribunal after taking into consideration the amendment in Rule 57G and the Board's circular remanded the matter to the adjudicating authority to examine the admissibility of credit under the amended provision of law. The appellant also relied upon the decision of the Tribunal in the case of J.B.M. Tools Ltd. v. CCE . The Tribunal after considering the Larger Bench of the Tribunal in the case of Kamakhya Steels(P)Ltd. held that where no declaration was filed the second clause of the amended notification will apply and allowed the benefit of credit where no declaration was filed in respect of the credit denied under Rule 57G. The contention of the appellant is that Rule 57H provides that during the transactional period, the manufacturer can avail credit in respect of such inputs which are lying in stock or such inputs which are used in the manufacture of final product. The contention is that as the inputs are used in the manufacture of final product, therefore, the credit cannot be denied on the ground that quantity of some inputs does not contain in the final product and credit is not available in respect of the inputs which were under the process loss.

3. The contention of the revenue is that as declaration was filed under Rule 57G on 4.3.94, therefore, prior to this declaration, no credit is available to the appellant. In respect of the claim of the appellant under Rule 57H, the contention is that the credit in respect of inputs which are actually used in the manufacture of finished goods is the quantum of inputs lost in process as calculated by the appellant is without any basis.

4. In this case the credit was disallowed on the ground that no declaration was filed under Rule 57G of Central Excise Rules. The Larger Bench of the Tribunal in the case of Kamakhya Steels (P) Ltd. after taking into consideration the amendment made under Rule 57G and Board's circular remanded the matter to the adjudicating authority to decide the issue of admissibility of credit afresh. In

view of the above decision of the Tribunal, the issue in respect of denial of credit on the ground that no declaration was filed is remanded to the adjudicating authority to reconsider the view of amendment made in Rule 57G. The adjudicating authority will decide after affording an opportunity of hearing to the appellant.

5. In respect of denial of credit under Rule 57H, the credit was disallowed in respect of the inputs lost during the manufacture of finished product is not available to the appellant. The reading of the provisions of Rule 57H makes it clear that manufacturer can take credit on such inputs which are lying in stock and on such inputs which are used in the manufacture of final product and which are cleared from the factory on or after 1.3.94. Therefore, I find merit in the contention of the appellant, credit cannot be denied on the ground that inputs are gone in invisible loss during the manufacture of final product. The impugned order in this regard is set aside and appeal is allowed in respect of denial of credit in Rule 57H. The appeal is disposed of as indicated above. The appellants are entitled for consequential relief, if any, in (sic) with law.

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