Commissioner of C. Ex. Vs. Polyset Plastics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-01-2007

Judge : T Anjaneyulu

Appellant : Commissioner of C. Ex.

Respondent : Polyset Plastics Ltd.

Judgement :

3. The respondents have cleared the capital goods under Rule 57S(I)(ii) on payment of duty equivalent to credit availed after deducting 2.5% of credit taken for each quarter of a year of the use in respect of paying duty prevalent at the rate of 13% at the time of clearance and then added to 2.5% per quarter of use of such capital goods and hence paid less duty amount of Rs. 4,30,086/- (Rupees Four Lakhs Thirty Thousand Eighty six only) on the removal of capital goods, under the aforesaid Rule. After noticing the same, Department had issued Show-Cause-Notice to the appellants which was later confirmed by Joint Commissioner, Central Excise & Customs, Panaji - Goa, and also imposed penalty of equivalent amount of duty. The appellants have filed an appeal before the Commissioner (A), who in turn set aside the Order in-Original and allowed the appeal filed by the assessee. Aggrieved by the same revenue is in appeal.CCE, Vadodara v. Asia Brown Boveri Ltd. . The respondent counsel also placed the reliance on the following case law - (i) CCE, Pondicherry v. National Oxygen Ltd. 2004 (176) E.L.T. 526 (Tri. Chennai)Eicher Tractors v. CCE, Jaipur 2004 (175) E.L.T. 277 (Tri.

Del.) It is observed that on transfer of capital goods, amount equivalent to benefit of credit availed only required to be reversed. The contention of the Department is that in case of removal of capital goods on which Modvat credit was availed, the duty should be paid as if capital goods were manufactured by the assessee in terms of the provisions of Rule 57S(I)(ii), is devoid of merit. Further, the Id. Counsel for the respondents have relied upon the case law of Kores (India) Ltd. v. CCE, Hyderabad 2004 (178) E.L.T. 901 (Tri.- Bang.). The Commissioner (A) has set aside Order-in-Original on both grounds limitation and on merits.

5. I have gone through the impugned order and also considered the submissions made by both sides and I do not find substantial force in the contention raised by the Department. The impugned order appears to be no way erroneous. After going through the provision of the said rule and case law evolved on the subject, I am of considered view that the rate of reversal of duty at the time of receipt of capital goods/inputs stands to the reason than the rate of duty applicable at the time of removal of goods. In view of the matter, the revenue appeal lacks merits, accordingly appeal is dismissed.