Celebrity Connections Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-19-2007

Reported in : (2007)(120)ECC147

Judge : P Chacko, K T P.

Appellant : Celebrity Connections

Respondent : Cce

Judgement :

1. The appellants had got certain garments manufactured at the premises of one M/s. Celebrity Fashions Ltd. [M/s. CFL for short] by supplying the raw material fabric to them during the period August 2003 to March 2004, when the garments were dutiable. The appellants and M/s. CFL are family concerns. The practice which was prevalent during the material period was that M/s. CFL would procure raw material in the name of their sister units like M/s. Celebrity Connections (Appellants) and allocate these goods to such units depending upon their export quota as determined by the Textile Committee. In the case of the appellants, a major part of the quantity of fabrics (input) procured by M/s. CFL in the name of the appellants were retained by them for job work and the balance quantity was allotted to the appellants for conversion to garments. The fabrics so allotted to the appellants for conversion to garments is not a part of the subject-matter of this case. The quantity of fabrics retained by M/s. CFL for conversion into garments as a job work for the appellants constitutes the subject-matter of this case.

The garments so manufactured by M/s. CFL as job worker for the appellants were cleared for export in the name of the appellants. In the impugned order, learned Commissioner denied CENVAT credit on inputs to the appellants in respect of the garments so exported on 3 grounds: viz. (a) the input was not received in the factory of the appellants; (b) the appellants did not manufacture the garments; and (c) during a part of the period of dispute the documents in the appellants command indicated excess production vis-a-vis the quantity of fabrics purchased by them. The appellants, on their part, claimed refund of an amount equal to the CENVAT credit on the ground that the entire quantity of final product had been exported. Learned Commissioner rejected this claim on the ground that the claimant was not even entitled to the credit.

2. The appeal and the present application are directed against the Commissioner's order. Learned Counsel for the appellants submits that learned Commissioner has not given the benefit of Rule 12B of the Central Excise Rules, 2002 to them. Learned Counsel refers to various provisions of this rule and submits that it was open to the appellants to get the garments manufactured by M/s. CFL as job worker without movement of fabrics from their premises to the premises of the latter.

Admittedly, the garments manufactured by M/s. CFL in the name of the appellants were cleared for export. Therefore, according to learned Counsel, the appellants were entitled to avail CENVAT credit on the fabrics and consequently to claim refund thereof. On the other hand, learned SDR submits that the procedure prescribed under Sub-rule (4) of Rule 12B was not followed by the appellants and hence they were not eligible for the benefit of the rule.

3. After a careful study of the provisions, it appears to us that Rule 12B authorized any person, duly registered with the Department, to get readymade garments manufactured on his account by a job worker and to discharge duty liability on the goods when cleared for home consumption. Sub-rule (3) of the said rule enables such person to supply or 'cause to supply' to a job worker inputs in respect of which he may or may not have availed CENVAT credit in terms of the CENVAT Credit Rules, 2002, without reversal of such credit, under a challan, consignment

note or any other document described in Sub-rule (4).

Sub-rule (4)(b) is a list of particulars to be entered in such document. It is the non-compliance with these provisions that has been pointed out by learned SDR while opposing the appellant's claim for CENVAT credit on inputs. According to learned Counsel this procedure is irrelevant inasmuch as, on the facts of this case, M/s. CFL (job worker) were retaining the raw material for job work instead of the same being physically supplied to them by the appellants. Where there was no physical movement of the raw material from the appellant's premises to the job worker, the provisions cited by learned SDR are not applicable according to learned Counsel. After considering the rival submissions, we have found prima facie case for the appellants. The expression 'cause to supply' occurring in Sub-rule (3) of Rule 12B appears to be covering a factual situation of the kind noted in the present case. It was the practice of M/s. CFL and their sister units including the appellants that the former was to procure the raw material, allocate the same to the latter depending on the quota, retain the balance quantity with them for job work and clear the garments resulting from the job work, for home consumption or for export as required by the other units. In this regime, perhaps, the provisions of Sub-rules (3) and (4) of Rule 12B require a harmonious construction. In this view of the matter, prima facie, it appears to us that the appellants were eligible for the CENVAT credit in question and consequently they had a legitimate claim for refund. Accordingly, there will be waiver of predeposit and stay of recovery in respect of the amount of credit denied and the equal amount of penalty.