Packwell Plastic Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Apr-25-2008

Judge : S T Chittaranjan

Appellant : Packwell Plastic Pvt. Ltd.

Respondent : Cce

Judgement :
1. Heard both the sides. The Appellants used to receive inputs from their principal manufacturer for manufacture of packing materials and after completing the job-work they used to return such packing material back to the principal manufacturer. They neither took credit on the inputs received nor paid duty on the packing material as the principal manufacturer was discharging the duty liability on the finished goods.

For part of the period, it was detected later on that the principal manufacturer did not pay duty on the finished goods which had become exempt. As such, the duty demand on packing material for the period was made on the Appellants since the exemption to job worker was conditional upon the principal manufacturer paying duty. The Appellants went to the Hon'ble Settlement Commission for settlement of the case arising out of such demand.

2. Shri Rajesh Chibber, learned Advocate appearing for the Appellants states that the Appellants requested the Hon'ble Settlement Commission to quantify the duty liability after taking into account the credit that would be available to them in

respect of the inputs, but the Hon'ble Settlement Commission quantified the duty amount without taking such credit into account and directed the jurisdictional Authorities to allow the CENVAT credit after examining duty paying documents etc. He further states that the jurisdictional Authorities after necessary verification have allowed credit of duty of Rs. 3,95,694.92 (Rupees Three Lakh Ninety Five Thousand Six Hundred Ninty Four and Ninety Two Paisa only) in pursuance of the order passed by the Hon'ble Settlement Commission, but the Authorities below have rejected the claim of the Appellants for refunding the amount in the absence of any specific legal provision to do so. Shri Chibber states that the credit granted to the Appellants is of no use as the Appellants are now in the exempted small scale sector and they can not utilize the credit for paying duty on the finished goods. He also states that had the Hon'ble Settlement Commission determined the duty payable after taking into account the credit available, the Appellants would not have had to make a cash deposit of higher amount requiring them to seek a refund now.

3. After hearing both sides, I find that the Appellants cannot be given a cash refund of the credit allowed to them in the absence of any legal provision to that effect. The only legal provision available for cash refund is in respect of credit of duty paid on inputs used in export goods. However, it is clear that the Appellants were made to pay a higher amount by the Hon'ble Settlement Commission and they are now left with credit granted to them subsequently which they cannot utilize. Under the circumstances, while dismissing this Appeal for refund of unutilized credit amount in cash for want of a legal provision to grant such refund, the Appellants are permitted to approach the Hon'ble Settlement Commission, which may vary its earlier order taking into account the CENVAT credit available to the Appellants and may re-determine the net amount payable by the Appellants towards their duty liability. It goes without saying that if such a re-determination by the Hon'ble Settlement Commission is made, the Appellants shall be eligible to grant of consequential benefit by way of cash refund of excess duty paid.

4. Before parting with the case, it is observed that the learned Advocate has brought to the notice of the Tribunal a letter dated 26.02.2008 issued by the Commissioner working in the office of the Hon'ble Settlement Commission to the

effect that no further clarification can be given by the Commission nor the earlier order of the Commission can be amended. However, it is hoped that in the greater interest of justice, the Hon'ble Settlement Commission may consider the prayer of the Appellants to vary the duty amount payable after taking into account the credit admissible to them which has been worked out as per the order of the Hon'ble Settlement Commission itself. It is felt that the Hon'ble Settlement Commission can not be equated with a functus officio, but would have all the incidental and ancillary power to render justice in such a case, particularly when no appeal is provided against the orders of the Hon'ble Settlement Commission.