Collector of Central Excise Vs. Weldekar Laminates (Pvt.) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-19-1990

Reported in : (1990)(29)ECC219

Appellant : Collector of Central Excise

Respondent : Weldekar Laminates (Pvt.) Ltd.

Judgement :

1. This is an appeal filed by the Collector of Central Excise, Bombay-Ill, against the order of the Collector of Central Excise (Appeals) bearing No. AMP-465/B-III-215/88 dated 22-7-1988 allowing the appeal of the respondents on merits.

2. Brief facts of the case for the purpose of disposal of this appeal can be stated as below.

3. The respondents are the manufacturers of decorative laminate sheets falling under Heading 39 of the Central Excise Tariff. They were receiving duty paid BOPP films classifiable under Heading 3902.31 for use in the manufacture of laminated sheets. They had availed of credit of duty paid on these films, since both the final product and the input were notified under the MOD VAT scheme. The department objected to the availment of the credit of the duty paid on these films used in the manufacture of laminated sheets on the ground that these films act as separators, while putting the sheets into the press and do not constitute as an input in the manufacturing process. These films prevent two layers of sheets from sticking together and they do not form part of the final product and hence cannot

be treated as inputs.

This could be treated only as appliance or apparatus which gets excluded by virtue of explanation to Rule 57A of the Central Excise Rules. On the basis of this contention, the department issued 5 show cause notices as per the details below :---Sr. No. S.C. No. and Date Amount Period---1.

RV/SCN/Weldekar/87/553 31,101.90 2/87 to 4/87 dt. 19-5-19872.

RV/SCN/Weldekar/87/9S4 5,035.61 May 1987 dt. 16-6-19883.

RV/SCN/Weldekar/87/954 10,831.13 July 1987 dt. 25-11-19874.

RV/SCN/Weldekar/87/212 1,47,643.35 3/86 to 1/87 dt. 25-2-19875.

CEX/RV/Weldekar/SCN/87 58,999.17 8/87 to 9/87 851 dt. 16-12-1987 4. The Assistant Collector in the adjudication proceedings confirmed the demands and ordered that the aforesaid credits wrongly availed of should be credited in the PLA or by cash recovery and the demand was confirmed in terms of Rule 57-1 of the Rules. When the matter was taken up in appeal before the Collector (Appeals), it was pleaded that one of the demands is time barred and while some are partly time-barred. The appellants also pleaded their cases on merits contending that they are eligible for MODVAT credit in respect of these films. However, the Collector (Appeals) without going into the question of time bar, allowed the appeal of the respondents on merits.

5. Shri K.M. Mondal, the learned Sr. D.R., for the department, explained the process of manufacture and also indicated as to how these films are used in relation to the manufacture of the final product - decorative laminates.

6. Shri A. Hidayatullah, the learned advocate also showed the samples of the films before use and also after their use and indicated that these films after use cannot be again used for the same purpose of lamination but can be used as packing material and in fact they are using these as packing material for the upper surface of the laminates.

7. Shri K.M. Mondal, the learned Sr. D.R., after explaining the process of manufacture and the use of the inputs in the said process indicated that the films do not form part of the final product and they only function as a separating medium between the two layers so that the two layers do not get stuck with each other, when they were subject to pressing under heat treatment. In view of this, these can be considered only as an appliance or apparatus. Though it is not disputed that these films are used in relation to the manufacture of the final product.

These films being in the nature of appliance or apparatus', get excluded from the purview of the MODVAT credit because of the explanation under Rule 57A. On the question of time bar, he conceded that according to the decision of the Tribunal taken in regard to similar matters, the demand dated 16-6-1988 is wholly time-barred as per Section 11A of the Central Excises and Salt Act, 1944. Likewise the demand dated 25-2-1987 is partly time-barred and hence he is not arguing on merits since the issue has already been settled by various decisions of this Tribunal. However, on merits, since the films cannot be construed as part of the finished product but they are used only for separating two layers, as a separating medium, it can only be construed as an apparatus or appliance and therefore gets excluded from the purview because of the Explanation. The Collector (Appeals) has gone by presumption and assumption and allowed the appeal on merits. He, therefore, requested for setting aside the order of the Collector (Appeals) on merits and restoring the order of the Assistant Collector to the extent of enabling the department to recover the duty subject to the time limit prescribed in Section 11A of the Act.

8. After hearing Shri K.M. Mondal, the learned Sr. D.R., we did not call upon the learned advocate Shri A. Hidayatullah to argue.

9. We find that in this case, as seen from the order of the Assistant Collector, he has admitted that these films were given proforma credit under Rule 56A of the Rules, where the requirement is that the inputs should be used as material or components. This benefit was allowed under the order of the Collector (Appeals) against which no appeal has been filed by the department. The MODVAT scheme does not make any such stipulation. Rule 57A lays down the requirement of the

use of inputs in or in relation to the manufacture of the final product. The only bar is that the items so used should not be hit by explanation to Rule 57A.The items which are sought to be excluded are machinery, equipment, apparatus, appliances etc. Hence the only question to be considered in the case of eligibility for inputs for MODVAT scheme as laid down under Rule 57A is to find out whether the input gets excluded because of the explanation. The allegation of the department is that films are apparatus or appliances. According to Mcgraw Hill Dictionary of Scientific and Technical Terms, "appliance" is given the meaning as below : "A piece of equipment that draws electric or other energy and produces a desired work saving or other result, such as electric heater, a radio, or an electronic range." In the context of the scientific and technical meanings given in the recognised dictionary, the BOPP films which are nothing but films made of synthetic resins cannot be construed as either an apparatus or an equipment or an appliance. Even going by the normal understanding of the aforesaid terms, we are unable to be convinced that these films could be construed as apparatus, equipment or appliance. Moreover, seeing the samples produced of the films both before usage in lamination and after usage, we find that the film loses its identity completely and becomes akin to a translucent paper. Hence we are convinced that these films get partly consumed in the process of manufacture of lamination sheets and lose their identity. They directly go in the process of lamination. Though, no doubt, they are retrieved and do not form part of the filial product, they lose their identity.

We do not subscribe to the view that for availing MODVAT scheme the input should form part of the final product because MODVAT scheme extends even to packing materials and the requirement is only that the inputs should be used in or in relation to the manufacture of the final product. In view of these considerations, we find that the order of the Collector (Appeals) does not call for any interference. Incidentally we also observe that the benefit was given to these films under Rule 56A, where requirements are more restricted than the MODVAT scheme and that has not been challenged by the Department, when the Collector (Appeals) held that they are inputs for producing lamination. We are, therefore, unable to appreciate the challenge now made with regard to the eligibility of the same inputs under MODVAT scheme. We make this observation, in the passing, and would like to make it clear that even viewing strictly from the eligibility under Rule 57A, we are satisfied that the inputs, namely BOPP film used in the manufacture of laminates is eligible for MODVAT credit. We, therefore, dismiss the appeal of the department and sustain the order of the Collector (Appeals) on merits.