Anand Polyrotex Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-21-1991

Reported in : (1991)LC314Tri(Delhi)

Appellant : Anand Polyrotex

Respondent : Collector of Central Excise

Judgement :
1.1. The appellants are getting duty-paid raw materials covered under Chapter 39 for being used in the manufacture of their final product - polythelene film - falling under sub-heading No. 3920.32.

During the manufacture, some scrap or waste arises. The appellants' plea is that this scrap/waste is exempted from payment of duty under notification No. 222/86 if such waste, parings and scrap, of plastics, arise from goods, falling under Chapter 39 or any other Chapter of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) on which the duty of excise leviable thereon under the Central Excises and Salt Act or the additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as the case may be, has been paid. The above condition is obviously fulfilled, according to the appellants, since the inputs are admittedly duty paid under Chapter 39.

2. Department relies on the provision of Rule 57F (4)(a)which states that "(4) any waste, arising from the processing of inputs in respect of which credit has been taken may- (a) be removed on payment of duty as if such waste is manufactured

in the factory; or" 3. Rebutting these contentions of the department, learned advocate for the appellants has urged that the scope of Rule 57F(4)(a) which is on identical lines as Rule 56A(3)(iv), is that the waste is to be removed on payment of duty only if it is otherwise dutiable. Dutiability has always to be seen not only with reference to the tariff item but also with reference to an exemption notification under Rule 8(1). He relies on the following two reported decisions : - (ii) 1987 (30) ELT 828 (Tri.)-Appellate Collector of Customs v. Chloride India Ltd. 4. We have carefully considered the pleas advanced on both sides. We find substantial force in the plea of the appellants. Reliance placed on Madhya Pradesh High Court's decision is well-placed. It holds as follows : - "(10)...As regards Clause (iv)(a) of sub-rule (3), this provision no doubt directs that the waste material shall be removed on payment of duty, but it presupposes that the waste material is not exempt from duty. The clause means that the waste material shall be removed on payment of duty, if any, payable thereon...." 4.1. Rule 57F(4)(a) is pari-materia. Rule 56A (3)(iv)(a). Madhya Pradesh High Court's ruling is applicable to the facts and circumstances of this case. West Regional Bench judgment mentioned supra is not so categorical. Following respectfully, the ruling of the High Court of Madhya Pradesh, we allow the appeal.