

Collector of C. Ex. Vs. Formac Engineering Ltd.

Collector of C. Ex. Vs. Formac Engineering Ltd.

SooperKanoon Citation : sooperkanoon.com/6418

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-30-1991

Reported in : (1991)LC95Tri(Mum.)bai

Appellant : Collector of C. Ex.

Respondent : Formac Engineering Ltd.

Judgement :

1. This is an appeal directed against the Order-in-Appeal bearing No.SKM-92/B-II-360, dated 19-12-1988 passed by the Collector of Central Excise (Appeals), Bombay, allowing the appeal of the Respondents. The department has brought the appeal against the aforesaid order of the Collector (Appeals).

2. The undisputed facts which were revealed by the Ld. JDR, Shri A.V.Naik, are the following .The Respondents filed a MODVAT declaration in respect of the inputs Serro Control-Amplifier on 29-6-1987 under dated acknowledgement from the Department. However, certain inputs had been received by the Respondents under G.P. No. 658 dt. 23-5-1987 and No.685 dt. 31-5-1987. Though they have received the same in the month of May 87, the credit was taken only on 30-6-1987, and utilised on the following day. The Collector (Appeals) has held that credit cannot be denied and hence the Department has come in appeal.

3. Shri Naik, pleaded that the stock of inputs should be lying and the case could be considered only under the provisions of Rule 57H of the Central Excise Rules, under which they have to apply to the Assistant Collector for permission to take

credit in respect of the stock lying with them prior to the filing of the declaration. Since they have failed to comply with this requirement, they are ineligible for the MOD VAT credit. Hence the Collector (Appeal's), order is not legally correct and is required to be set aside and the order of the Asst.

Collector confirming the demand for ineligible MOD VAT credit be restored.

4. After hearing Shri A. V. Naik, the Ld. JDR, I did not call upon the other side to argue.

5. The relevant extract of Rule 57G of the Central Excise Rules are extracted below: " (1) Every manufacturer intending to take credit of the duty paid on inputs under Rule 57A, shall file a declaration with the Assistant Collector of Central Excise having jurisdiction over his factory, indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products and such other information as the said Assistant Collector may require, and obtain a dated acknowledgement of the said declaration.

(2) A manufacturer who has filed a declaration under sub-rule (1) may, after obtaining the acknowledgement aforesaid, take credit of the duty paid on the inputs received by him." From the above, it can be seen that the procedural requirement is that the manufacturer, before taking credit should obtain a dated acknowledgement in respect of the declaration to be filed under Rule 57G. It is not disputed that such an acknowledgement has been obtained on 29-6-1987 and the credit was taken only on 30-6-1987. When this is admitted, it comes within the purview of Rule 57G of the Rule itself.

Shri Naik's main contention is that it is covered by Rule 57H of the Rules and the claim is allowed only with the permission of the Assistant Collector. The relevant extract of Rule 57H are reproduced below: "(1) Notwithstanding anything contained in Rule 57G, the Assistant Collector of Central Excise may allow credit of the duty paid on inputs received by a manufacturer immediately before obtaining the dated acknowledgement of the declaration made under the said rule if he is satisfied that, - (i) such inputs are lying in stock or are received in the factory after filing the declaration made under rule 57g, or (ii) such inputs are used

in the manufacture of final products which are cleared from the factory on or after the first day of March, 1987." and that no credit has been taken by the manufacturer in respect of such inputs under any other rule or notification : " From the above it is observed that the Assistant Collector may allow credit of the input received by the manufacturer before obtaining the dated acknowledgement and such inputs are lying in stock or are received in the factory after filing the declaration. In this case, there is no discussion as to whether the goods have been taken into consumption or otherwise. It is also an admitted fact that the inputs as well as the final products are specified as eligible inputs, in the MOD VAT Scheme . In the circumstances, even if this technical requirement of applying to the Assistant Collector is not complied with, the Assistant Collector has to give the benefit of credit, especially when he has taken the credit only after filing the declaration and not on receipt of the inputs, on his own. Viewed from this angle also, the objection raised is not sustainable . In view of this, I do not find any reason to interfere with the order of the Collector (Appeals), and accordingly the appeal from the Revenue is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com