Collector of Central Excise Vs. Maize Products

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-12-1993

Reported in : (1995)(75)ELT818Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Maize Products

Judgement :
1. This is an appeal from the Revenue against the order in appeal No.V-2 (15C) 3052/81, dated 18-12-1985, allowing the appeal of the respondents on the ground of time-bar. Since the Revenue seems to be aggrieved by this order, they have come in appeal.

2. The undisputed facts are that the respondents brought Tapioca Starch declared as input under Rule 56A for the manufacture of modified starch and Dextrose. The dispute relates to the credit of Rs. 36,258 taken during the period 6-1-1978 to 29-4-1978 under a show cause notice issued on 9-4-1980. The Collector (Appeals) has allowed the appeal of the respondents without going into the merits, mainly on the ground of time-bar. The allegation is that the input was received from M/s.

Chaudhary Sago and Jaggery suppliers, Salem who is a wholesaler and they used to purchase starch received under different gate passes from different licencees, some of whom also cleared starch within the exemption limit. Hence, the starch received from such source was mixed up in his premises and subsequently despatched under his own invoice to get the proforma credit under Rule 56A.

However, no supporting evidence to this allegation is discussed in the order of the Asstt. Collector.

The un-dis-puted fact is that the source of supply of Tapioca starch as M/s. Chaudhary Sago and Jaggery Suppliers, Salem was indicated in the D-3 declaration submitted by the respondents alongwith the Gate Passes and they were verified by the Central Excise Officer before allowing credit. The Collector (Appeals) has therefore, allowed the appeal of the respondents on the ground of time-bar.

3. Heard Shri Ravinder Jain, the ld. JDR for the Department, who contended that the fact that the appellants are getting Tapioca starch from a wholesaler who mixed up both the exempted starch as well as the duty paid starch in his premises and thereafter supplied, was not revealed to the Department.

4. I have carefully considered this submission but could not persuade myself to accept the same; because of the fact that the D-3 declaration, clearly revealed the source of acquisition of the inputs, alongwith the Gate Pass. There is no allegation to the effect that the particulars of the inputs received, do not tally with the Gate Passes.

No evidences are discussed in the Asstt. Collector's order to show that the aforesaid source has mixed up various materials and supplied. In any case in such a situation, the officer who does the verification is entitled to demand the subsidiary Gate Pass instead of verifying and allowing credit. In view of the fact that the materials particulars were available before the Department at the time of verification and the entry of the inputs, the extended period may not be applicable.

Hence, the Collector is justified in allowing the appeal of the respondents on the ground of time-bar. In the result, the appeal from the revenue is rejected.