

Collector of C. Ex. and Cus. Vs. Premier Tyres Ltd.

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SooperKanoon Citation : sooperkanoon.com/731679

Court : Kerala

Decided On : Feb-07-2001

Reported in : 2001(130)ELT417(Ker)

Judge : S. Sankarasubban and; A. Lekshmikutty, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 35G(1); Central Excise Rules, 1944 - Rule 57A, 57A(1), 57C to 57G and 57-I

Appeal No. : R.C. No. 1 of 1995

Appellant : Collector of C. Ex. and Cus.

Respondent : Premier Tyres Ltd.

Advocate for Def. : Joseph Markose and; Joseph Kodianthara, Advs.

Advocate for Pet/Ap. : K. Ramakumar, CGSC

Judgement :

ORDER

S. Sankarasubban, J.

1. The Customs, Excise & Gold (Control) Appellate Tribunal, South Regional Bench at Madras has referred the following questions for our consideration, under Section 35G(1) of the Central Excises & Salt Act, 1944 :

'Whether the Tribunal is right in holding that the credit taken in respect of the inputs contained in that portion of the goods which were cleared without payment of duty does not require to be reversed, as the credit was correctly taken when the inputs were brought into the factory, and the same were correctly utilised in terms of Rule 57F and that the provisions of Rule 57C in the facts of this case would not apply.'

The facts of the case are as follows :

2. The respondent, M/s. Premier Tyres Ltd. is the manufacturer of tyres. They filed a declaration under Rule 57G of the Central Excise Rules and took Modvat credit in respect of the inputs specified under Rule 57A. After the finished goods were manufactured, the respondent cleared part of the goods free of duty under a notification. The Department took the view that since the part of the goods was cleared without duty, the credit entry with regard to that be reversed. This is clear from Annexure A issued by the Superintendent of Central Excise. In Annexure A, it is stated that the proportionate amount of duty on inputs utilised in the manufacture of the following tyres and tubes as (O.E.) under AR3 No. 1/88-89, dated 5-1-1989 may be reversed. Against that, the respondent filed an appeal before the Appellate Authority. The Appellate Authority rejected the contention of the respondent and the matter was taken before the Tribunal. The Tribunal took the view that the Rules as such provide for taking of the Modvat credit on the specified inputs when the specified product in or in relation to which these inputs are to be used are not exempted. The Tribunal is of the view that at the time when the inputs were received, there was no exemption for payment of duty to the finished products. It is possible that in some cases the finished product as such may be chargeable to duty but the same may be cleared without payment of duty under certain conditions and such cases cannot be taken to be covered by Rule 57C and Rule 57C can be taken to be applicable only in cases where at the time when the inputs were received and when the credit is to be taken the finished specified goods can be cleared under a general exemption notwithstanding the same being specified under Rule 57A. Therefore, the Tribunal held that the credit taken was correctly taken and the only fault that can be found by the authorities is with reference to the utilisation of the same. The Tribunal further held that the

manner of utilisation of the credit is specified under Rule 57F and under Rule 57F(3) the same can be used for payment of duty on any of the final product in or in relation to the manufacture of which such inputs are intended to be used.

3. We heard learned Counsel for the Department Shri K. Ramakumar and learned counsel for the Company Sri Joseph Kodianthara.

4. Sri K. Ramakumar, learned Counsel for the Department, submitted that the credit regarding inputs is given only when ultimately the products are chargeable to duty. If ultimately, the products are not chargeable to duty, the credit is to be reversed. But on the other hand, Shri Joseph Kodianthara, learned Counsel appearing for the respondent submitted that it is not a case where the products were completely exempted. The products were not exempted. At the time of giving credit, the manufacturer did not know that some products will be free from duty. In such cases, it is not necessary that credit should be reversed.

5. Rule 57C of the Central Excise Rules states that no credit of the specified duty paid on the inputs used in the manufacture of a final product shall be allowed if the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty. The respondent is making tyres and according to the Department, these are liable for excise duty. But certain types of tyres have been exempted from excise duty by a notification. But at the time when the credit was given regarding the inputs, it was not known that these products were exempted from duty. Under Rule 57G(1) of the Central Excise Rules, every manufacturer intending to take credit of the duty paid on inputs shall file a declaration with the Assistant Commissioner 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 the said final products and such other information as the said Assistant Commissioner may require, and obtain a dated acknowledgement of the said declaration. Thus,. Rule 57C of the Central Excise Rules mandates that no credit of duty paid on the inputs used in the manufacture of a final product shall be given if the final product is fully exempt from duty or is chargeable to nil rate of duty. Utilisation of the credit comes after allowing a credit of duty paid on the inputs. If any credit is wrongly taken and then utilised there are

provisions in the Modvat scheme under Rule 57-I by which limitation of period has been provided for recovery of the wrong credit initially taken or utilised. According to us, utilisation of the credit is different from taking the Modvat credit if at the time of taking the Modvat credit, products are not exempted. Thus, according to us, it is not necessary to reverse the entry immediately. It is enough if it is utilised later. Further in this case, we were told that exemption notification was subsequently issued. The exemption notification was not there at the time when the credit was taken. Further, the Supreme Court in Collector of Central Excise, Pune and Ors. v. Dai-Ichi Karkaria Ltd. and Ors. - (1999) 7 Supreme Court Cases 448, has held as follows :

'Rules 57A(1), 57C to 57G and 57-I of the Central Excise Rules, 1944 clearly indicate that a manufacturer obtains credit for the excise duty paid on new material to be used by him in the production of an excisable product immediately after he makes the requisite declaration and obtains an acknowledgement thereof. He is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the rules which provides for a reversal of the credit by the Excise Authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. The credit in the instant cases having been taken validly, is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available'.

In view of the above, we answer the question in favour of the assessee and against the Department.