Collector of Central Excise Vs. Maxon India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-18-1994

Reported in : (1994)(72)ELT483TriDel

Appellant : Collector of Central Excise

Respondent : Maxon India Ltd.

Judgement :

1. The issue for determination in these appeals is the applicability of Rule 57D of the Central Excise Rules, 1944 to waste and scrap generated during the course of manufacture of BOPP films and cleared under Heading 39.15 of Central Excise Tariff Act 1985 at nil rate of duty in terms of Notification No. 53/86.

2. The respondents hereunder are engaged in the manufacture of BOPP films falling under Heading 39.20 CETA, 1985 and were availing the facility of Modvat credit of duty on the inputs namely, Polypropylene copolymer, Polypropylene monopolymer and Polypropylene compound under Rule 57A. During the period November, 1990 to March, 1991, they cleared waste, scrap and paring of other plastics falling under Heading 39.15 and Polypropylene falling under Heading 39.02 at nil rate of duty. It was observed that there was a high generation of waste vis-a-vis BOPP films and therefore, show cause notices were issued to the respondents proposing recovery of the amount of credit of duty availed by them in respect of the inputs that have gone into the manufacturing of waste, scrap and paring and Polypropylene granules. The basis for the proposed recovery was that the provisions of Rule 57D were not applicable as the percentage of wastage i.e.

67.76% was much higher than the percentage of final product and that the Polypropylene granules were being manufactured from recycled waste, scrap and paring of plastic arising during the manufacture of BOPP films and the granules were also being cleared at nil rate of duty. The Assistant Collector confirmed the demands. The Collector (Appeals) extended the benefit of Rules 57D and set aside the orders of the adjudicating authority holding that the Rules do not deny any benefit to any inputs which are available in the waste irrespective of its quantum. Hence these appeals by the Revenue.

3. We have heard Shri V.C. Bhartiya, learned DR and Shri A.N. Haksar, learned Senior Counsel alongwith Shri Sanjeev Puri, learned Counsel.

The process of manufacture of BOPP films is as follows :- "Waste and scrap of plastic generated at various stages of manufacture of BOPP films is simultaneously fed into regranulation plant within the factory. Virgin polypropylene are fed into the extruder. This extruder is electrically heated and is widened slit die with adjustable lips and are then passed on to a chilled metal roll and taken to a wind up stand. The film is then passed over heated differential speed rolls where it is stretched in the machine direction. This causes the film to thin down without reducing its width. The film so obtained at this stage is monoaxially oriented.

For biaxial orientation, subsequent stretching in the transverse directions is accomplished on equipment known as tender frame which consists of two endless chains equipped with gripping clamps mounted on a frame. The film produced is 4000 mm. wide and is collected on mill rolls. These rolls are stored for 72 hours at ambient conditions in maturation area to facilitate stabilisation of physical properties and are cut into various widths through a set of slitting machines comprising mechanical razors and sheer cutters.

The actual width depends upon the end-use requirement. The process of operation is purely physical by mechanical stretching and re-orientation of molecules for achieving desired physical properties for packing, over-wrapping and lamination. The whole process is carried out in an absolutely dust free environment with controlled temperature and relative humidity, which is achieved by filtered and cooled airblown into the process area from the air-conditioners.

Thus, a fixed temperature is maintained in the process area during the whole operation of manufacture.

According to the Department, wastage which is in the form of thin films and thin cuttings of films is simultaneously sent to the regranulation plant for conversion into granules. It is important to mention that unless all this waste cuttings are regranulated simultaneously into granules, the accumulated waste cuttings, being fluffy, occupies a very large space in the plant and adversely affects the controlled temperature and the ambient conditions in the plant as a result of which the whole plant will come to a standstill. The assessee had been recycling part of the granules obtained in the regranulation plant and was selling remaining quantities of granules to independent buyers." 4. It is relevant to note that in the present appeals, the final product is BOPP films which are admittedly chargeable to excise duty.

The lower appellate authority has gone into the question of denial of Modvat credit by the Assistant Collector only on the ground of high percentage of wastage and she has also recorded her finding that the adjudicating authority has not taken into account whether the high wastage could result nor has he relied upon the report from his field office which could clarify as to whether the wastage was really high or otherwise. Further, she has held that the departmental authorities were aware of the fact that waste arises during the course of manufacture of BOPP films as they were visiting the factory of the assessees and inspecting and verifying the percentage of wastage from time to time from the statutory registers. No satisfactory or convincing argument has been put forth by the DR to dislodge this finding of the Collector (Appeals). Further we find that the assessees had, in their appeal before the Collector (Appeals), stated that their factory was set up in 1989 and commercial production of BOPP films commenced in March, 1989 and during the first few months of commencement of production, the percentage of waste and scrap was high due to initial setting up problems and frequent power trippings and this has not been controverted by the Department. In the light of the fact that the final product is BOPP films which is cleared on payment of duty (and not granules), we hold that credit of inputs contained in waste arising during the manufacture of BOPP films is covered by Rule 57D irrespective of the quantum of waste. We uphold the impugned order and reject the appeals of the Revenue.

4A. With due respects to Hon'ble Member (J) my views and orders in this matter are as follows :- 5. I observe that the material which may constitute wastage for one channel or stream of operation, may be utilisable as input for another stream or for recycling and further use even in the same stream.

6. In the instant case, therefore, it is also required to be seen as to the material which is being described as waste is really treated and disposed of as waste or reutilised as an input again whether for re-cycling purposes or otherwise and the product which such a use generates.

7. Since in the instant case the waste material is being admittedly utilised for recycling and production of granules as well, therefore, the extent to which it is being so utilised is also required to be kept in mind.

8. In my opinion, the benefit extended by Rule 57D would be available to the appellants only to the extent of material. The so-called waste is actually treated as waste and disposed of as such but the quantity which is reutilised for the purpose of producing granules or otherwise will have to be treated on different footing. It was all the more essential since it has been stated that the granules so produced are also being cleared as such for being sold to independent buyers.

9. In view of the above position, the impugned orders are required to be modified to the above extent and the matter is required to be remanded to the Asstt. Collector for de novo consideration in accordance with the law and the above observations.

Sd/- In view of the difference of opinion between the Vice President and the Hon'ble Member (Judicial), the matter is submitted to the President for reference to a Third Member on the following point: "Whether in the facts and circumstances of this case, the Department's appeal is required to be rejected as proposed by Hon'ble Member (Judicial) or the matter is required to be remanded in the light of the observations of the Vice President." The point of difference is referred to Shri G.A. Brahma Deva, Member (J).

10. In view of the difference of opinion between the Hon'ble Vice President and the Hon'ble Member (Judicial) the matter has been referred to me by the President on the issue whether Department's appeal is required to be remanded or required to be rejected.

11. The respondents are engaged in the manufacture of BOPP films falling under Heading 39.20 CETA, 1985 and were availing the facility of Modvat Credit of duty on the inputs, viz., Polypropylene, Co-polymer, Polypropylene monopolymer and Polypropylene compound under Rule 57A. During the period from November, 1990 to March, 1991 they cleared waste, scrap and paring of other plastics falling under Heading 39.15 and Polypropylene falling under Heading 39.02 at nil rate of duty. It was observed that there was a high generation of waste vis-a-vis. MOPP films produced during the period 11/90 to 1/91 and 2/91 to 3/91. Show cause notices were issued and confirmed the demand by Assistant Collector on the ground that the provisions of Rule 57D were not applicable as the percentage of wastage was higher than the percentage of final product and that the polypropylene granules were being manufactured from recycled waste, scrap and paring of plastic arising during the manufacture of BOPP films and the granules were also being cleared at nil rate of duty. In appeal, Collector (Appeals) held that the credit on the inputs contained in the waste arising during the manufacture of BOPP films is covered by Rule 57D irrespective of the quantum of waste which may arise.

12. I have heard both sides with reference to difference of opinion.

Shri V.C. Bhartiya, learned J.D.R. for the Revenue submitted that wastage which is in the form of thin films and thin cutting of films is simultaneously sent to the regranulation plant for conversion into granules. Since assessee had been recycling the parts of the granules obtained in the regranulation plant and selling the granules to independent buyers, the benefit under Rule 57D would be available to the extent of waste material but not to the quantity which is reutilised for the purpose of producing granules and the issue with reference to the extent of quantity reutilised is to be determined by the Assistant Collector as it was rightly observed by the Hon'ble Vice President and accordingly matter deserves to go back by way of remand.

He also referred to the decision in the case of L.M.L. Ltd. v.Collector of Central Excise, reported in 1989 (44) E.L.T. 199 wherein it was held that as per Rule 57F only the inputs or the waste arising from the processing of such inputs for utilisation in the manufacture of final product alone can be removed. The goods which is neither inputs as such brought into the factory nor a waste cannot be removed under Modvat Scheme. Each consignment of what is described as cut off by the appellants have to be examined by the Departmental Officers and the case to which such a consignment is put has to be taken into account by such Officers before they can be termed as cut off or waste and scrap.

13. On the other hand, Shri A.N. Haksar, learned Senior Advocate submitted that Modvat credit has been denied by the Assistant Collector only on the ground of high percentage of wastage. But there was no condition or restriction in Rule 57D to deny the benefit on the ground of high percentage of wastage. He said that this issue was rightly considered by the Judicial Member in para 4 of the order in upholding the view taken by the Collector (Appeals). He also said that the ratio of the decision cited by the Departmental Representative is not applicable to the facts of this case. He submitted that in the commencement up production the percentage of waste and scrap was higher due to initial setting of problems, technical difficulties, power failure and the conditions prevailing at that time in Punjab, but now the percentage of waste has been reduced to 15 per cent.

14. I have considered the submissions made by both sides with reference to the difference of opinion. I find that the Collector (Appeals) has given a clear finding that Modvat credit has been denied by the Asstt.

Collector only on the ground of high percentage of wastage. In fact excess waste was clearly admitted by the Department and no case is made out by the Department that the party used the inputs for the manufacture of any item which was clandestinely removed by them and benefit cannot be denied on the ground of high percentage of wastage as it was observed by the Collector (Appeals). Since final product is BOPP films which is cleared on payment of duty and in the facts and circumstances of the case credit of inputs contained in waste arising during the manufacture of BOPP films is covered by Rule 57D irrespective of the quantum of waste, I am of the view that remand should not result in to cover the deficiencies or to make out a new case. Accordingly, the view expressed by Member (Judicial) is concurred with and the matter is sent back to the original Bench to pass an appropriate order.

In view of the majority opinion the impugned order is upheld and the appeals are rejected.