

Collector of Central Excise Vs. Century Laminating Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-31-1994

Reported in : (1996)(86)ELT487TriDel

Appellant : Collector of Central Excise

Respondent : Century Laminating Co.

Judgement :

1. This appeal is directed against the impugned order-in-appeal passed by the Collector of Central Excise (Appeals), New Delhi.
2. Shortly put the facts of the case are that the respondents M/s.

Century Laminating Co. Ltd. Hapur are the manufacturer of Plastic Laminating sheet falling under heading 3920.31 of CET, 1985. It was the case of the Revenue that the respondents cleared 18.346 MT of unbleached absorbent kraft paper from their factory under Rule 57F(1)(ii) during November, 1989 without payment of appropriate Central Excise duty on the allegation that they received the said kraft paper on payment of duty and availed of Modvat credit at the restricted rate of Rs. 800/- per tonne in view of Notification No. 149/87-C.E., dated 20-5-1987 and at the time of clearance of the same they paid the duty only equal to Modvat credit availed of by them that is to say at the rate of Rs. 800/-per tonne by debiting instead of paying the appropriate rate of duty leviable on the said goods at the time of clearance from the factory. Besides, according to Revenue the respondents also cleared 4059 Kg. of Condonal under the said rule After paying

Central Excise duty equivalent to the amount of Modvat credit availed of by them that is to say @ 10% ad valorem instead of paying the Central Excise duty @ 15% Adv. while affecting clearance, since the respondents company is not a small scale unit eligible for concessional rate of duty of @ 10% Adv. On these facts Show Cause Notice dated 22-5-1990 was issued to the respondents calling upon them to pay the differential Central Excise duty amounting to Rs. 43,535.94 which was hotly contested by the appellants. However, the Additional Collector after usual adjudication proceedings confirmed the demand and also imposed the personal penalty of Rs. 5,000/- upon the respondents.

Against that order of the Addl. Collector the respondents filed their appeal before the Collector (Appeals), Central Excise, Ghaziabad, who vide his impugned order dated 30-11-1992 set aside the adjudication order passed by the Additional Collector and allowed the appeal following the judgment rendered by the Ld. Single Member (Judicial) of this Tribunal in the case of SAE (India) Limited v. Collector of Central Excise, Indore -1992 (61) EX.T. 726. Hence the present appeal by the Revenue.

3. Arguing on behalf of the Revenue Shri S.K. Sharma, Ld. JDR submitted that under Rule 57F(1)(ii) of Central Excise Rules, 1944, the inputs received by the assessee may be removed from the factory on payment of appropriate duty of excise, as if such inputs have been manufactured in the said factory and further that as per Rule 9A(i) ibid the rate of duty and the Tariff Valuation shall be the rate and the valuation in force on the date of the actual removal of such goods from such factory or warehouse. In the instant case admittedly the respondents received the inputs at concessional rate from SSI Unit and cleared these inputs subsequently from their factory under the said rule at the same rate instead of paying full rate at which they were supposed to pay the duty inasmuch as the inputs are treated as deemed manufactured if these are cleared as such from the factory and the rate applicable will be effective rate and not concessional rate under Notification No.175/86-C.E., as amended. He took us through the impugned order-in-appeal passed by the Collector (Appeals) and submitted that the said case of SAE (India) Ltd. v. CCE, supra, relied upon by the Collector (Appeals) is distinguishable from the facts of the case as the present case relates to the

removal of the inputs during November, 1989 that is to say before amendment in Rule 57F on 1-3-1992 as explained by a Two Member Bench of this Tribunal itself in paragraph 5 of the judgment rendered in the case of Modi Rubber Ltd. v. Collector of Central Excise 4. In reply Ld. Counsel for the respondents Shri Vipin Garg while supporting the impugned order-in-appeal contended that Rule 57F(1)(ii) allows removal of the inputs in respect of which a credit of duty has been allowed under Rule 57A subject to the prior permission of the Collector of Central Excise from the factory for home consumption on payment of appropriate duty of excise, as if such inputs have been manufactured in the said factory and its Proviso provides that where the inputs are removed from the factory for home consumption on payment of duty of excise, such duty of excise shall in no case be less than the amount of credit that has been allowed in respect of such inputs under Rule 57A and Sub-rule (1A) of Rule 57 provides that notwithstanding anything contained in clause (ii) of Sub-rule (1), the inputs in respect of which a credit of duty has been restricted in terms of proviso to Rule 57A may be removed from the factory for home consumption on payment of duty of excise equivalent to the credit availed on such inputs. In this premises he submitted that if the inputs are not used in or [in] relation to the manufacture of final product by the respondents and the amount of duty paid on clearance of such inputs is more than that of the amounts of credit taken then it will become an absurd proposition. To buttress his submission he cited the case of Bengal Immunity Co. Ltd. v. State of Bihar - AIR 1955 SC 661 wherein it was held that legal fictions are created only for specific purpose and these must be limited to that purpose and should not be extended beyond that legitimate field a case followed in the case of I.T. Commr., Kanpur v. M.I.R. Industries (P) Ltd., AIR 1985 SC 1720.

5. Considered. The only question which arise for our consideration in this appeal is as to whether the inputs that is to say unbleached absorbent kraft paper and codonal received by the appellants and cleared by them during November, 1989 and on which the Modvat credit was taken could be removed on payment of duty under Rule 57F(1)(ii) at the same rate of duty at which the credit was taken as held by the Collector (Appeals) or could be removed on payment of duty as prevalent at the time of the clearance of the goods as contended by the Revenue.

6. For the purpose of understanding and deciding the controversy in hand it would be advantageous to reproduce Rule 57F as it existed during the relevant period (that is to say during November, 1989) which read as follows: "57F. Manner of utilisation of the inputs and the credit allowed in respect of duty paid thereon. - (1) The inputs in respect of which a credit of duty has been allowed under Rule 57A may - (i) be used in, or in relation to, the manufacture of final products for which such inputs have been brought into the factory; or (ii) be removed, subject to the prior permission of the Collector of Central Excise, from the factory for home consumption or for export on payment of appropriate duty of excise or for export under bond as if such inputs have been manufactured in the said factory: Provided that where the inputs are removed from the factory for home consumption on payment of duty of excise, such duty of excise shall in no case be less than the amount of credit that has been allowed in respect of such inputs under Rule 57A".

7. By Notification No. 4/92-C.E., dated 1-3-1992 the following Sub-rule (1A) has been inserted which reads as follows : (1A) Notwithstanding anything contained in clause (ii) of Sub-rule (1) the inputs in respect of which a credit of duty has been restricted in terms of proviso to Rule 57A, may be removed subject to prior permission of Collector of Central Excise from the factory for home consumption on payment of duty of excise equivalent to the credit availed on such inputs." 8. Explaining the effect this amendment in the rule a two Member Bench of this Tribunal in the case of Modi Rubber Ltd. v. Collector of Central Excise, "4. Considered. The short question involved in the instant appeal is, as to whether the inputs, that is to say, Synthetic Rubber (Cisemar) received by the appellants on 13-12-1985 and on which the credit was taken can be removed on payment of duty under Rule 57F(1) at the same rate of duty at which the credit was taken, as contended by the appellants, or could be removed on payment of duty as prevalent at the time of clearance of the goods, as held by the authorities below. SAE (India) Ltd. v. Collector of Central Excise, supra, it was held by a Single Member that where the assessee is not the manufacturer of the inputs, but purchases duty paid inputs which were cleared from the original manufacturer, there is no justification for the recovery of higher rate of duty at the time of removal from his factory. This position, in our opinion, would hold good only after 1-3-1992 after the Rule 57F was suitably amended; and prior to that period, the rate

prevalent on the date of removal of the goods from the factory from which the goods were removed under Rule 57F would have to be applied, in view of the specific provision of the rule prior to such amendment." 9. Thus, following the ratio of the said decision we hold that the subject goods may be removed only on payment of duty as prevalent at the time of the clearance of the goods during November, 1989 as demanded in the Show Cause Notice. The case of Bengal Immunity Co. Ltd. and IT. Commr., Kanpur, supra, do not advance the case of the respondents as no body is extending the legal fiction beyond the legitimate filed in the instant case.

10. In the result, we set aside the impugned order-in-appeal so far as it relates to the setting aside of the demand and restore the order of the Additional Collector so far as it relates to the demand of Central Excise duty amounting to Rs. 43,535.94 and pass no order regarding personal penalty as neither in the Memorandum of Appeal nor during the course of arguments it was contended by the Revenue that the personal penalty should be imposed on the respondents.

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