

Happy Steels Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-19-1995

Reported in : (1996)(81)ELT405TriDel

Appellant : Happy Steels

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order of the Collector of Central Excise (Appeals), Chandigarh confirming the demand for duty.
2. I have heard Shri Gopal Prasad, advocate for the appellant and Shri Sanjeev Sachdeva Departmental Representative for the department.
3. The appellant was a manufacturer of forged products. For this purpose it received as inputs steel ingots and billets which were sent to the job worker for conversion into bars and rounds. It was found that the appellant had not taken permission of the Assistant Collector to remove the inputs under the provisions of Rule 57F(2) of the Central Excise Rules. Therefore the Assistant Collector after adjudication proceedings held that credit was not available on the ingots and billets which were converted into bars and rounds and confirmed the duty equal to the credit which had been taken. This order has been confirmed by the Collector (Appeals) 4. Shri Gopal Prasad points out that the appellant had declared the ingots and billets as well as bars and rounds as inputs under Rule 57G. The only reason for denying of credit was that prior permission had not been taken from the

Assistant Collector. Shri Gopal Prasad points out that the appellant had been granted permission under Rule 57F(2) in January 1988. There was therefore at most a procedural interaction which should not come in the way of the appellant availing modvat credit. He relies upon the decision of the South Regional Bench of this Tribunal in *Maschmeijer Aromatics (I) Ltd. v. Collector of Central Excise - 1990 (46) E.L.T. 95 (Tribunal)*.

5. Shri Sanjeev Sachdeva, departmental representative says that at that time when the inputs were removed, the appellant did not have permission under Rule 57F(2). This is not mere an empty formality but was essential. Therefore the fact that permission was granted later would not entitled him to take credit at the relevant time.

6. There is no denying the fact that the appellant had declared the ingots and billets as well as the bars and rounds as inputs in its declaration under Rule 57F which was filed before November, 1987, the period to which the demand relates. There is not also no denying the fact that within a couple of months after November, 1987, the appellant had received permission under Rule 57F(2). In my view therefore the finding of this Tribunal in the case cited and especially the observations in paragraph 4 would apply to the facts of this case. I also note that Rule 57F(2) at the relevant time did not require prior permission to be obtained but only provided that permission had to be granted. There is therefore a strong case for saying that the permission subsequently granted for the identical inputs and finished products would have the effect of ratifying the earlier conduct of the appellant in removing the ingots and billets for making intermediate products.

In these circumstances I am of the view that the appellant had rightly taken the credit and allow the appeal. Consequential relief if any to follow.

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