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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-1995

Reported in : (1996)(83)ELT341TriDel

Appellant : Oswal Vanaspati and Allied

Respondent : Coll. of C.E.

Judgement :

1. The appellants manufacture Vegetable Products using certain raw materials viz. minor oils like Rice Bran oil which were covered by two Notifications 22/87, dated 1-3-1987 and 45/89-C.E. (N.T.), dated 11-10-1989 which granted the facility of Money Credit as provided for in Rule 57K of Central Excise Rules, 1944. The former notification was rescinded on 25-8-1989. The appellants had originally filed a declaration on 10-3-1988 during the currency of the former Notification and started availing of the benefit thereunder. When the latter Notification was issued on 11-10-1989 after some gap following the rescission of the earlier Notification,, they filed a fresh declaration and obtained dated acknowledgement thereof on 11-10-1989. They, however, availed money credit for the receipts of specified Mineral Oils from 20-10-1989 itself which was prior to their filing the declaration. This was objected to and the Collector of Central Excise, Chandigarh passed the impugned order disallowing under Rule 57P, the credit availed of by them during the period 20-10-1989 to 9-11-1989 as wrongly taken. Their contention that their original declaration filed under Notification 27/87 continued to be valid was rejected as he held that it had no legal validity in relation to the subsequent Notification 45/89,

dated 11-10-1989 even if the benefit and the quantum thereof in the two schemes might have been the same.

2. Arguing the case of the appellants, Shri Harbans Singh, learned Advocate stated that they had taken up the matter with the Collectorate Advisory Committee regarding the admissibility of the benefit for the period prior to the filing of their second declaration in November, 1989. They got a reply informing them that the (original) declaration filed by them on 2-3-1987 in pursuance of Rule 57-O would be considered valid for availing Money Credit under (the subsequent) Notification 45/89, dated 11-10-1989 also. He then submitted a copy of the Tribunal Order No. A/295/1994-NRB, dated 22-3-1994 [reported in 1994 (72) E.L.T.78 (Tri.)] holding the respondents therein M/s. Rajasthan Vanaspati Products Limited to be eligible for the benefit of money credit under Notification 27/87, dated 1-3-1987 on the strength of their classification list though they had not filed a separate declaration as per Rule 57-O. The learned counsel submitted that this will support their case. He then stated that they had maintained all records and submitted returns which will bear out their receiving the minor oils and utilising them as required for the availment of the benefit in question. He referred also to the Tribunal decision in Wox Coolers v. Collector of Central Excise - 1993 (63) E.L.T. 637. The appeal may be allowed, he concluded.

3. Shri Sanjeev Sachdeva, learned Senior Departmental Representative replied to the aforesaid submissions by stating that the earlier Notification was rescinded and the new Notification was issued after a gap. It was not a continuation of the earlier Notification. Once the 1987 Notification was rescinded, the declaration filed thereunder ceased to exist and a fresh declaration was necessary. For the period before they filed such a declaration in terms of the new Notification, they were not eligible for the benefit. The credit availed by them has rightly been disallowed. The appeal maybe dismissed, he concluded.

4. We have taken note of the submissions. We have perused the record including the Tribunal decision in the Rajasthan Vanaspati Products Limited case referred to by the learned counsel. We find that that company had claimed the benefit of Notification 27/87 by filing the classification list effective from-1-3-1987. They

availed the credit only after obtaining the approval of the Assistant Collector in March, 1987 allowing them to do so as per Rule 57K of the Central Excise Rules. While upholding the order of Collector (Appeals) which was in their favour, the Tribunal made it clear that their decision was in the specific circumstances of that case and there is no doubt that the provisions of 57-O are required to be followed. The present appellants, however, apart from not filing a declaration under Rule 57-O, did not also file any classification list spelling out their intention to avail the benefit of the Notification in question before the crucial date of receipts of the specified inputs. Thus, they took the credit for the receipts from 20-10-1989 to 10-11-1989, even though they obtained the dated acknowledgement of their declaration under Rule 57-O only on 10-11-1989. There is, however, an additional argument by the learned counsel that the appellants had already filed a declaration under the earlier Notification 27/87, dated 1-3-1987 and that the same should see them through even for the purpose of the subsequent Notification. A parallel has been sought to be drawn with the Tribunal decision in Wox Coolers case where a declaration had originally been filed by them under Rule 57G for availment of Modvat Credit. Thereafter they had opted for full exemption from duty taking a holiday from the Modvat drill. After exhausting their entitlement of duty free clearances, they again switched over to the Modvat phase. In that context, the Tribunal had held that their original declaration was good enough and their not filing a fresh declaration when they reverted to Modvat Scheme was not held to be a disability for availment of Modvat. Their classification list also indicated their intention to avail Modvat after exhausting their duty free clearances which helped their case as it did in the Rajasthan Vanaspati Products Limited matter which case was relied upon by the learned counsel for the appellants. As against these decisions where a declaration of sorts was there in the classification list, there was no such redeeming factor in the present case. Moreover Notification 45/89 (as indeed its predecessor 27/87) is highly procedure oriented to regulate the taking of the money credit and its actual utilisation for payment of duty on the vegetable product made from the subject Minor Oils. The importance or rather the indispensability of the declaration under Rule 57S had been recognised by the Tribunal in *Tata Oil Mills v. Collector of Central Excise* - 1990 (48) E.L.T. 279. It was held therein that, without filing a declaration as required under Sub-rule (1) of

Rule 57-O, money credit cannot be availed since the filing of such a" declaration is a condition precedent for availing money credit. We also find that the Honourable Gujarat High Court had held in Wipro Limited v. Union of India -1992 (60) E.L.T. 370 that as required under the Notification, the credit is required to be taken on the same day and it cannot be taken afterwards and that if the credit is permitted to be taken afterwards it would not be possible for the department to verify the claim. This again is because of the procedure prescribed in the Notification regarding the manner of taking the credit and of its actual utilisation. This requirement will have its effect on the contention that once the declaration, even if it was under the rescinded Notification, had been filed, that itself will meet the needs of the subsequent notification also and a fresh declaration will not be necessary. We also find that in the Money Credit Scheme as spelt out in Rules 57K to 57P there is no transitional provision similar to Rule 57H applicable to Modvat Credit on inputs received prior to filing of the declaration under Rule 57G. There is, however, some merit in the defence plea that there is bound to be some time lag between the date of the Notification and that of the Trade Notice issued by the concerned Collectorate for the guidance of the assesseees. In this connection, we find that Trade Notice 60/1989, dated 26-7-1989 and Trade Notice 57/91, dated 6-9-1991 had been issued by Bombay Collectorate-I clarifying that for the intervening period between the date of issue of the Notification and the date of issue of trade notices by the Collectorates, money credit should not be denied, provided the said oils had actually been used for the purpose specified in the Notification. Such an approach will be justified because of the inevitable time lag between the date when the notification is issued and the time when the departmental officers and the manufacturers get to know about it, through Circulars or Trade Notices, as the case may be. In the present case, the time lag between the publication of the notification and the dated acknowledgement of the declaration is not much and is only about a month. Actually, however, credit had been taken only for a shorter period, 20-10-1989 to 9-11-1989. From the extracts of the factory records submitted by the appellants, we find that the officers had verified the stocks of Raw Oils on 21-10-1989 which included RB Oil 10,302 kgs. as against the recorded balance of 10,300 kgs. It was noted by them in the Register that the difference was negligible. The officers had also paid visits on 23-10-1989, 25-10-

1989, 10-11-1989, 11-11-1989, 15-11-1989 and 7-12-1989 as seen from the copies of the Register submitted. Only on 15-11-1989, and 7-12-1989 was RB oil referred to. Samples were drawn on 15-11-1989 of RB Oil for onward submission to the Chemical Examiner. On 9-12-1989, four samples were drawn for testing. There is no such drawal of samples on their visits on the other days. Such failure to draw samples could be due to the fact that the appellants had not filed the declaration again.

5. On the question that their declaration filed in March, 1988 continued to be there and would be relevant for the new notification also, we find that the requirement of declaration has been spelt out in Rule 57-O and not in the notifications themselves. While it maybe difficult for the department to satisfy itself about receipt of inputs of minor oils, its indigenous source, manner of utilisation etc. if the time lag between the issue of the new notification and the date of filing of declaration thereunder is long, that difficulty is reduced in the present case as the successor Notification came to be issued within two months of the rescinding of the original notification and the delay in filing the declaration is also about a month only. The period of wrong taking of credit was for a still shorter period of about twenty days only from 20-10-1989 to 10-11-1989. During this period the officers have visited the factory and seen the manufacturing operations and checked the registers. In view of the same, we hold that in the peculiar circumstances of the case the earlier declaration can be said to be available and would be relevant for the purpose of Rule 57-O. The said Rule runs as follows :- "Rule 57-O. Procedure to be observed by the manufacturer. - (1) Every manufacturer intending to take credit under this section shall file a declaration with the Assistant Collector 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 each of the said final products and such other; information as the said Assistant Collector of Central Excise may require and obtain a dated acknowledgement of the said declaration.

(2) A manufacturer who has filed a declaration in Sub-rule (1), may, after obtaining the acknowledgement aforesaid, take credit of money on the inputs : Provided that no credit shall be taken unless the inputs are manufactured in the factory of

manufacturer of the final product or are received in the factory under a proper invoice or despatch note indicating the name and address of the supplier of inputs : Provided further that the manufacturer shall ensure that the supplier is normally manufacturing or trading in such inputs and the name and address shown on the invoices are correct." The crucial Sub-rule '(2) lays down that a manufacturer who has filed a declaration in Sub-rule (1) may, after obtaining the acknowledgement take credit of money on the inputs. It does not specifically state that such inputs should be only those received after obtaining the dated acknowledgement of the declaration. A view can be taken that while credit can be taken only after obtaining the dated acknowledgment thereof, it is not to be restricted to the inputs to be received after such acknowledgement. As noted by us earlier, the Money Credit Scheme covered by Rules 57K to 57P does not have a transitional provision akin to the Modvat Rule 57H to take care of the inputs received immediately before obtaining the dated acknowledgement of the declaration. But it cannot be that in the absence of such a transitional provision, the receipt of the inputs should be left in the lurch. As stated earlier, the actual wording of Rule 57-O requires that credit can be taken only after obtaining the dated acknowledgement but it is not specifically limited to only inputs received after obtaining the dated acknowledgement. The safeguards built into Rule 57H for Modvat cases are available in the elaborate Notifications themselves. If these are taken care of, the availing of money credit will be in conformity with the provisions governing Money Credit Scheme. On that note, we set aside the order and allow the appeal subject to the condition that the appellants satisfy the Assistant Commissioner that their taking the credit and utilising it were as permitted in the relevant Notification (No. 45/89) and subject to its procedural safeguards.

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