

Plastichemix Industries Vs. Commr. of C. Ex. and Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-28-1995

Reported in : (1996)(84)ELT467Tri(Mum.)bai

Appellant : Plastichemix Industries

Respondent : Commr. of C. Ex. and Customs

Judgement :

1. For hearing the applicants' appeal on merits, they are required to deposit Rs. 3,74,032.00 towards duty and Rs. 5000/- towards penalty.

Their plant and machinery have also been confiscated but allowed redemption on payment of fine of Rs. 2000/- vide Order-in-Original No.48/Demand/95, dated 13-10-1995 passed by the Commissioner of Central Excise & Customs, Vadodara.

2. Though this day only stay application was listed for hearing, since the arguments canvassed by both the sides fall within the short compass and on the basis of these arguments the appeal itself can be disposed of, with the consent of both the sides, we have taken up the appeal itself for disposal.

3. The appellants are engaged in the manufacture of two products namely master batches falling under Chapter 32 and polypropylene moulding powder falling under Chapter 39. They were receiving duty paid common inputs namely polypropylene, if used in either of the two final products, is eligible for Modvat credit. However, the appellants did not declare polypropylene moulding powder as final product in the

declaration filed under Rule 57G of the Central Excise Rules. Their declaration mentioned polypropylene as an input against the only final product master batches. All the same, they were utilising the credit of duty paid on polypropylene in regard to duty payable on polypropylene moulding powder. By a show cause notice dated 1-9-1993 the department sought to reverse the Modvat credit of duty taken in regard clearance of polypropylene moulding powder during the period August 1988 to November 1990.

4. The aforesaid facts are not disputed by both the sides. Shri Willingdon Christian, the Id. advocate mainly pleads on the ground of time bar and also submits that even if credit is sought to be disallowed, it does not get extinguished and is always available for utilisation towards duty payable on master batches, which is their declared final product.

5. Shri Gurdeep Singh, the Id. JDR, however, pleads that non-declaration itself amounts to suppression, on the basis of which extended period can be invoked. Since the credit has already been utilised towards undeclared final product, it cannot get revived for utilisation towards the declared final product.

6. After hearing both the sides, we find that there is no dispute that both master batches and polypropylene moulding powder are notified final products, in respect of which polypropylene can be brought in and used as an input. The only omission on the part of the appellant is that they have not declared polypropylene moulding powder as a final product in their declaration. On account of this omission, they would not be in a position to utilise the credit in regard to duty payable on polypropylene moulding powder. All the same whether this omission can be with an intention to evading duty is a point to be looked into.

Since polypropylene moulding powder is also a notified final product under the Modvat scheme in regard to polypropylene, there could not have been any desire to suppress the declaration to polypropylene moulding powder as final product, so as to avail of Modvat credit, which was not legally eligible for this product. Moreover, in this case, the appellant have been submitting RT 12 Returns alongwith, gate passes and RG 23A Part II extracts, which would reveal that the credit accruing on polypropylene is being drawn for the undeclared final product

and hence the error or omission in nondeclaring the final product could have been pointed out within the normal period of limitation. We, therefore, accept the plea that the demand is hit by time bar, apart from our accepting the plea that even if credit is sought to be denied in regard to undeclared final product, that credit could not get extinguished because of the fact that the final product, in which it has gone, is not an exempted one and such a credit would always be available for utilisation towards duty payment in regard to the declared final product master batches. This observation is only meant to show that there is no revenue implication in the final analysis. However, we are allowing the appeal only on the ground of time bar.

7. Since the appeal itself is disposed of, stay application does not survive for consideration and the same is also treated as disposed of.

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