

Basf India Limited Vs. Commissioner of Central Excise, Belapur-ii

Basf India Limited Vs. Commissioner of Central Excise, Belapur-ii

SooperKanoon Citation : sooperkanoon.com/943200

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-23-2010

Judge : The Honourable Mr. Ashok Jindal, Member (Judicial)

Appeal No. : APPEAL NO. E/3290 of 2006

Appellant : Basf India Limited

Respondent : Commissioner of Central Excise, Belapur-ii

Advocate for Pet/Ap. : Shri Bharat Raichandani, Advocate for Appellants. Shri B.P. Pareira, JDR. Authorized Representative.

Judgement :

Per : Ashok Jindal, Member (Judicial)

Heard both sides.

2. This is the second round of litigation wherein the duty demand has been confirmed against the appellant.

3. The issue involved in this case is that whether the appellants are required to reverse the duty on lost quantity which were not issued by the manufacture of finished goods and whether the reconciliation statement submitted by the appellant and had any relevance with the demand confirmed.

4. Shri Bharat Raichandani learned Advocate appearing on behalf of the appellant argued the matter on merits as well as raised the point that the show cause notice is bad. In this case the show cause notice is bad and in not accordance with law as it was issued when the Cenvat Credit Rules, 2000 were in force by invoking old Modvat Rules. To support this contention he placed reliance on Sunrise Structurals and Engg. Ltd. reported in 2004 (117) ECR 307 (Tri.-Mumbai). Wherein it was observed that therefore, the law applicable on the date of show cause notice has to be invoked in this case. Rule 57I was not in existence in the statute book on the date of show cause notice namely 19.6.2001. Hence the present show cause notice is not sustainable.

5. Considering the submissions made by the learned Advocate on the issue of show cause notice I find that the case law cited by the learned Advocate is squarely applicable in this case also. In the cited case also, the show cause notice was issued on 19.6.2001 invoking the provisions of Rule 57I. Rule 57I provided for recovery of modvat credit taken wrongly by an assessee. The modvat provisions contained in Rule 57A to Rule 57U were substituted by Cenvat provisions, by Notification No. 27/2000-CE(NT) dt. 31.3.2000. Therefore, on the date of issue of the show cause notice, Modvat provisions were not in existence in the statute book having been substituted. There is no saving clause contained in the Notification cited hereinabove when it substituted Modvat provisions with Cenvat provisions. On these facts it was held that show cause notice is not sustainable. In this case also, the period involved is 1.3.1999 to 28.2.2000 and the show cause notice was issued on 15.7.2002 which is much after the Notification No. 27/2000 dated 31.3.2000. Substituting modvat provisions with Cenvat provisions as on the date of issuance of the show cause notice modvat provisions were not in existence of statute book having been substituted. Hence, in this case also the show cause notice is not sustainable. Without going into the merit of the case, I find that the appeal can be allowed on this count only. Accordingly, without considering the other issue the impugned order is set aside, the appeal is allowed with consequential relief if any.