

Spm Tools Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-28-1996

Reported in : (1997)(89)ELT199Tri(Mum.)bai

Appellant : Spm Tools

Respondent : Commissioner of Central Excise

Judgement :

1. When the matter was taken up for hearing, the registry brought to my notice a letter dated 28-6-1996 from the appellants requesting for an adjournment. However, considering the nature of the order being passed, it is not necessary to grant any adjournment and hence the appeal is taken up for hearing.

2. The appeal is directed against the captioned order-in-appeal confirming the order-in-original dated 22-2-1991 of the Asstt.

Commissioner of Central Excise, Sangli Divn.

3. The issue involved is, whether, in granting benefit for availment of Modvat credit on the goods lying in stock on the date when the declaration under Rule 57G is filed, should be restricted to the actual duty paid or the benefit of higher notional credit contemplated under Rule 57B should also be given. There is no dispute that application under Rule 57H has already been filed seeking permission to avail of the Modvat credit on the goods lying in stock.

4. Shri Talagia, the Id. JDR, submits that for the purpose of Rule 57H, the credit is available only to the extent of actual amount paid as duty and benefit of higher notional credit, contemplated under Rule 57B is not available. He, therefore, supports the order.

5. Considering the submissions made and going through the records, Rule 57B is brought in as a departure to the concepts that the Modvat credit is available to the extent of the actual duty paid on the inputs received. This departure is made with an intention to see that the small scale units which otherwise enjoyed the benefit of concessional rate of duty, may not be adversely affected in relation to the Modvat scheme, as the customers would be tempted to buy goods from other manufacturers who do not avail of the SSI benefit and availed of Modvat credit at the higher rate. There is no convincing reason available to hold as to why the said benefit should be withheld when the goods have been received prior to filing of the declaration particularly when vide Rule 57H, the benefit is intended to be given to the inputs lying in stock. If the inputs were brought from non-SSI unit, full credit was available. No discrimination is intended or spelt out the provisions of rule as they stood. Composite reading of all the rules has to be undertaken and therefore the approach of the authorities below in restricting the Modvat credit to the extent of the duty paid on the goods removed from the SSI unit and not granting benefit of higher notional credit, does not seem to be in confirmity with the provisions.

Under these circumstances, the approach of the authority below, cannot be sustained and the order is therefore set aside. Appeal is allowed.

Consequential relief to follow.

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