Collector of Central Excise Vs. Gopal Soap Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-09-1996

Reported in : (1996)(87)ELT750TriDel

Appellant : Collector of Central Excise

Respondent : Gopal Soap Industries

Judgement :
1. By this appeal, the Collector, Central Excise has assailed the order of Collector (Appeals) allowing Modvat credit amounting to Rs. 55,639.20 under Rule 57H.2. The facts of the case are that the respondents herein are engaged in the manufacture of washing powder. The respondents took Modvat credit amounting to Rs. 55,639.20 on the stock of soda ash, demolition, CMC, acid slurry on 1-2-1989 in their RG 23A part II but they filed declaration under Rule 57G on 6-2-1989 with the Assistant Collector, Central Excise. The respondents also filed an application for permission under Rule 57H on 3-2-1989.

3. The Additional Collector while adjudicating the case held that Rule 57H cannot be read and applied in isolation as it is a part and parcel of the Modvat scheme; that Rule 57H prescribed the procedure for availment of Modvat credit and even the Modvat credit earned under Rule 57H can be utilised as per the procedure prescribed under Rule 57G; that the party themselves took Modvat credit on 1-2-1989 prior to filing the declaration without permission and therefore, denied them the benefit of Modvat.

4. The Collector (Appeals), in his order, held that prior permission of Assistant Collector is not necessary for taking credit under Rule 57H and therefore, held that Modvat credit amounting to Rs. 55,639.20 was not deniable to the respondents herein.

5. Against this order of the Collector (Appeals), the Revenue has filed the present appeal.

6. Shri Y.R. Kilaniya, the learned DR appearing for the appellants submitted that the admitted position was that Modvat credit amounting to Rs. 55,639.20 was taken by the respondents on 1-2-1989 whereas an application for permission under Rule 57H was filed on 3-2-1989. He submitted that Rule 57H specifically says that Modvat credit can be taken only after filing the application and since in the instant case, the application was filed after taking Modvat credit. Therefore, he submitted that the Collector (Appeals) has wrongly allowed the Modvat credit. He therefore, prayed that the appeal may be allowed.

7. Shri M.P. Devnath, the learned Advocate appearing for the respondents herein submitted that for purpose of availing the benefit under Rule 57H prior permission was not stipulated in the Central Excise Rules. In support of his contention, the ld. Counsel cited and relied upon the decision of the Tribunal in the case of E.M.C. Steelal Ltd. v. C.C.E. (Allahabad) reported in 1993 (44) ECR 215. He submitted that Rule 57H provisions are conditional provisions and contemplated that these procedures can be followed notwithstanding the provisions of Rule 57G. He submitted that Rule 57H does not talk of taking credit. It talks of allowing credit; that allowing credit shall mean availing credit. The learned Counsel submitted that credit was availed after filing the declaration. Summing up his arguments he submitted that in view of the specific case law and in view of the specific provisions under Rule 57H, their case was fully covered by the case-law cited and relied upon by them. He therefore, prayed that the appeal maybe rejected.

8. Heard the submissions of both sides. I find that the short issue for determination before me is whether Modvat credit could be taken under Rule 57H before filing the declaration. Rule 57H stipulates as under : Rule 57H - Traditional Provisions - (1) Notwithstanding anything contained in Rule 57G, the Assistant Collector of

Central Excise may allow credit of the duty paid on inputs received by a manufacturer immediately before obtaining the dated acknowledgement of the declaration made under the said rule if he is satisfied that,- (i) such inputs are lying in stock or are received in the factory after filing the declaration made under Rule 57G, or (ii) such inputs are used in the manufacture of final products which are cleared from the factory on or after the first day of March, 1987, and that no credit has been taken by the manufacturer in respect of such inputs under any other rule or notification : Provided that such inputs are not used in the manufacture of final product which is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty.

It would be seen that this rule contemplates that the Assistant Collector may allow credit of the duty paid on inputs received by a manufacturer immediately before obtaining the dated acknowledgement of the declaration under the said rule etc. I find that declaration under Rule 57G was filed on 6-2-1989. However, an application for availing benefit of Rule 57H was filed on 3-2-1989 whereas credit of duty amounting to Rs, 55,639.20 was taken on 1-2-1989, therefore, on the basis of the facts of this case, the issue is not whether prior permission of Assistant Collector was necessary or not but the issue is whether the benefit of Rule 57H can be taken before filing the application. In this view of the matter the ratio of the decision cited and relied upon by the respondents will not be applicable to this case.

Another point that has emerged is whether the application filed on 3-2-1989 is a declaration. A declaration is a prescribed format under Rule 57G and has got certain information to be furnished. Now whether this application filed on 3-2-1989 amounted to declaration or not is a moot question. This point becomes necessary because Rule 57H talks of declaration and declaration is required to be filed under Rule 57G.Even if we say that the application filed on 3-2-1989 was a declaration for purpose of Rule 57H even then the Modvat credit was taken on 1-2-1989. Rule 57H also provides that the Assistant Collector of Central Excise may allow credit of duty. Here the word 'allow' is important. Does it mean taking credit or availing credit. Allowing credit is only taking credit because in the Modvat scheme taking credit is important and credit can be availed when it is taken and since in the instant case credit was taken on 1-2-1989 and therefore, it was in complete violation of provision of Rule 57H. In this view of the matter, the order of the Collector (Appeals) is set aside in so far as it relates to allowing Modvat credit of Rs. 55,639.20 is concerned.

Hence the impugned order is modified to the extent stated above and the appeal is disposed of accordingly.