Madhya Pradesh Polypropylene Vs. Collr. of C. Ex.

Madhya Pradesh Polypropylene Vs. Collr. of C. Ex.

SooperKanoon Citation : sooperkanoon.com/9862

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-08-1996

Reported in : (1996)(88)ELT730TriDel

Appellant : Madhya Pradesh Polypropylene

Respondent : Collr. of C. Ex.

Judgement :

1. The appellants are aggrieved by the order dated 28-6-1991 passed by the Commissioner of Central Excise (Appeals), Indore by which the Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Central Excise, Bhopal confirming the demand of Rs. 9,64,683.38 and imposing penalty of Rs. 5,000/- on the appellant herein. The issue relates to admissibility of Modvat on Polypropylene resin used in the metallised polyprylene film manufactured by the appellant during the period October, 1987 to March, 1989 on the basis that there was no proper declaration on the inputs p.p. resins for final product metallised film under Rule 57G of the Central Excise Rules. The demand arises also on account of denial of Modvat on evaporation boats, graphite foils, masking band for the reason that they are in the nature of equipment and appliances and tools which are excluded from the definition of term inputs in the explanation to Rule 57A of Central Excise Rules.

2. We have heard Shri Gopal Prasad, ld. Counsel for the appellant and Shri Satnam Singh, ld. DR. So far as the denial of Modvat credit in respect of resins is concerned, it is seen that PP resins is used for the manufacture of plain film which

is also declared according to the original declaration in which the PP resins has been declared as inputs. In March, 1987 declaration, the appellants had declared metallised film and plain film as final product. The departmental objection is that since there is no declaration of PP resins as an input for metallised film as final product the appellant could not have taken Modvat credit thereon. It is admitted position that for both the plain and metallised film, the raw material is the same. In fact in the order of Assistant Commissioner he has recognised the position because in his order he has observed that PP resins is the basic raw material for PP film whether plain or metallised. Parts of appellants production of PP film is cleared on payment of duty and some quantity is also issued for metallisation within the factory. The metallised film is also the final product which is cleared on payment of duty. The Assistant Commissioner in his order has recognised the position that the plain film so used will be in the nature of intermediate product and will be eligible for exemption for such captive use hence product will come under Notification No. 217/86. Having said so, the objection has still been taken that in the absence of specific declaration of PP resins as an input for metallised film, the differential duty for the interim period between October, 1987 and March, 1989 has to be paid.

This view would appear to be a technical and narrow view to take having regard to the process of manufacture and the various declarations made by the applicant referred to above. It will also be a technical objection when considered against the admitted position that the inputs are in fact used in the production of final product which are cleared on payment of duty. In such a view of the matter, the denial of Modvat credit is not justified and it is so held.3. As regards the other material the role of each of them in the production process has to be seen. The Assistant Commissioner's order contains the details from which it is observed that evaporation boats are in the form of bowles in which aluminium wires are placed for heat treatment. The graphite foil is used as flexible joint between evaporation boats and the clamp. These two materials are thus clearly in the nature of tools and equipments and have rightly been denied Modvat credit, invoking the explanation of Rule 57A. The same however, cannot be said of the material masking band. It is made from thick polymide film coated with teflon. On heating the aluminium vapours are deposited on this belt shape band which is brought into the contact with chilled BOPP film. The material in question, therefore, clearly participates in the manufacturing process and will be eligible as an inputs used in manufacture of final product of the appellant herein. In the result, appeal is disposed of by holding that order denying the Modvat credit on resin as input for metallised film is not sustainable and, therefore, is set aside. Evaporation boats and foils of graphites are rightly denied Modvat credit. Masking bands are eligible inputs for Modvat credit in the view we have taken as above.

4. It is also observed that the appellants are not opposing the case against the demand of Rs. 762.43 on account of availment of excess credit. In the view we have taken above, the quantum of penalty is to be reduced which is accordingly lowered from Rs. 5,000/- to Rs. 1,000/-. The appeal is disposed of in the above terms.