(2010) 01 P&H CK 0215

High Court Of Punjab And Haryana At Chandigarh

Case No: C.E.A. No. 138 of 2005

Commissioner of C. Ex.	APPELLANT
Vs	
Diplast Plastics Ltd.	RESPONDENT

Date of Decision: Jan. 15, 2010

Acts Referred:

- Central Excise Rules, 1944 - Rule 57, 57A

Citation: (2010) 257 ELT 397

Hon'ble Judges: Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mehinder Singh Suller, J.
The facts barely needed, culminating in the commencement of, relevant for disposal of present appeal and emanating from the record, are that as per the Central Excise Policy, the plastic storage tanks upto the capacity of 300 liters are exempted from payment of excise duty, subject to the condition that no credit of the duty was paid on the inputs used in the manufacture of such goods. The respondent-M/s. Diplast Plastics Limited, Mohali-assessee (hereinafter to be referred as "the assessee") was engaged in the manufacture of PVC Pipes and Plastic storage tanks. The assessee had been maintaining a separate account of raw material i.e. plastic granules to be used in finished products i.e. two categories of water storage tanks of plastic. The Central Excise Officers were stated to have conducted detailed examination of the records in respect of the period of assessment years 1996-97 and 1997-98 and found that there has been an excess consumption of the manufacture of tanks of above capacity of 300 litres. According to the Department, the credit had been taken on the inputs/raw material, meant for non-exempted categories of water storage tanks, but it has not been used in the manufacture of such goods by the

manufacturer. In the wake of show cause notice, the reply filed by the assessee was considered, but the adjudicating authority negatived its claim and raised the demand of tax vide order impugned order dated 6-3-2003 (Annexure Al). Consequently, the Commissioner (Appeals) confirmed the demand as well.

2. The appeal filed by the assessee was accepted by the Commissioner (Appeals) vide order dated 25-6-2003 (Annexure A2). Likewise, the appeal filed by the revenue was also dismissed by the Customs, Excise and Service Tax Appellate Tribunal, vide impugned order dated 7-6-2004 2004 (176) E.L.T. 323 (Tri. - Del.)] (Annexure A3).

3. The revenue still did not feel satisfied with the impugned orders and filed the present appeal, which was admitted to consider the following substantial question of law proposed in sub-para 8 of para 1 of the memorandum of appeal:

Whether the benefit of exemption notification can be granted to the party, when they had not fulfilled the condition and did so, only after being caught by the department?

4. That is how, we are seized of the matter.

5. As indicated earlier, the Commissioner (Appeals) as well as the Appellate Tribunal accepted the claim of the assessee and dismissed the appeals of the revenue, vide impugned orders (Annexures A2 and A3).

6. Learned Counsel for the revenue has contended that the assessee did not initially fulfil the condition and had not reversed the entire Modvat credit of raw material in the finished exempted goods and as had reversed the credit only after being detected by the Department, therefore, the assessee was not eligible to avail the benefit of exemption.

7. On the other hand, learned Counsel for the assessee has argued that admittedly, the assessee has already reversed the entire Modvat credit of raw material, so the benefit cannot be withdrawn, in view of the law laid down by the Hon''ble Supreme Court in Chandrapur Magnet Wires (P) Ltd., Nagpur Vs. Collector of Central Excise, Central Excise Collectorate, Nagpur, and this Court in C.E.A. No. 1 of 2006 titled "The Commissioner of Central Excise, Ludhiana v. Nestle India Limited, Moga and Anr.

8. We have heard the learned Counsel for the appellant and have gone through the aforesaid judgments.

9. The facts of the present case are neither intricate nor much disputed. It is not a matter of dispute that the plastic storage tanks up to the capacity of 300 litres are exempted from payment of excise duty and assessee is using plastic granules for manufacturing exempted and non-exempted plastic water tanks of both the categories. Now the core question that arises for determination in this appeal is whether the assessee is entitled to the indicated exemption, in respect of the inputs used in the manufacture of exempted products or not.

10. Having regard to the rival contentions of learned Counsel for the appellant, we are of the view that the assessee is entitled to the exemption. Again, it is not a matter of dispute that the assessee has reversed the credit in respect of inputs used in the manufacture of exempted as well as non-exempted products. However, the argument of learned Counsel for the revenue that since the reversal of credit was after the verification and detection by the Department, therefore, the assessee is not entitled to the exemption, is not only devoid of merit, but misplaced as well, because the mere fact of reversal of credit is sufficient compliance to claim the indicated benefit, in respect of inputs used in the exempted goods as admittedly, the assessee is manufacturing exempted as well as dutiable goods using the same material.

11. An identical question was decided by the Hon''ble Supreme Court in Chandrapur Magnet Wires (P) Ltd. case (supra). Having interpreted the relevant provisions of Rule 57 of the Central Excise Rules, 1944, it was observed by the Apex Court as under:

It is true that the assessee has not maintained separate accounts of segregated the inputs utilised for manufacture of dutiable goods and duty free goods, as should have been done. The contention of the Department that in this situation, the assessee is not entitled to reverse the entries and get the benefit of the tax exemption is a question which merits serious consideration. There is no doubt that the assessee should have maintained separate accounts for duty free goods and the goods on which duty has to be paid. But our attention was drawn to a departmental circular letter on this problem in which it has been clarified by the Minister of Finance as under:

3. The credit account under MODVAT rules may be maintained chapterwise, MODVAT credit is not available if the final products are exempt or are chargeable to nil rate of duty. However, where a manufacturer produces along with dutiable final products, final products which would be exempt from duty by a notification (e.g. An end use notification) and in respect of which it is not reasonably possible to segregate the inputs, the manufacturer may be allowed to take credit of duty paid on all inputs used in the manufacture of the final products, provided that credit of duty paid on the inputs used in such exempted products is debited in the credit account before the removal of such exempted final products.

This circular deals with a case where the manufacturer produces dutiable final products and also final products which are exempt from duty and it is not reasonably possible to segregate inputs utilised in manufacture of the dutiable final products from the final products which are exempt from duty. In such a case, the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid. This can be done only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before the removal of the exempted final products.

In view of the aforesaid clarification by the Department, we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. If this debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted product will stand deleted in the accounts of the assessee. In such a situation, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. In other words, the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken credit of the duty paid on the inputs used in manufacture of these goods.

12. The same view was reiterated by this Court in M/s, Nestle India Limited, Moga''s case (supra).

13. As is evident from the record that the assessee had been maintaining separate account of raw material, which is being used for manufacturing the exempted as well as dutiable products and has already reversed the entire credit of raw material. In that eventuality, the assessee is certainly entitled to the benefit of exemption of tax.

14. In the light of the aforesaid reasons, it is held that the assessee is entitled to the benefit of exemption, once it has reversed the entire Modvat credit. Thus, the legal question is answered against the revenue.

15. For the reasons recorded above, the appeal is dismissed, with no order as to costs.