Customs, Excise and Gold Tribunal - Mumbai
Commissioner Of C. Ex. vs Philips India Ltd. on 29 March, 2006
Bench: S T Chittarajan, T Anjaneyulu
ORDER Chittaranjan Satapathy, Member (T)

1. Heard both sides. The respondents have taken input duty credit on Nitrogen Gas, which is received through pipeline. Most part of it has been used in manufacture of dutiable lamps and some part of it has been used for non-dutiable lamps.

2. The learned Advocate for the respondents states that it is not in dispute that since the nitrogen gas is received through pipeline, is in not possible to segregate the same for use in dutiable and non-dutiable lamps. It has not also been possible to maintain any separate account. Hence, using a formula, they have reversed the proportionate amount of credit amounting to Rs. 62,827/'- and Rs. 14,743/- representing the input duty on nitrogen gas used in the non-dutiable lamps. He also states that the original authority has recorded in his order that the department is not disputing the correctness of the formula. The learned Advocate also makes a statement that this reversal was made before clearance of the non-dutiable lamps from the respondents factory .

3. The original authority has, however, confirmed the demand amounting to Rs. 1,09,21,592/- representing 8% of the value of the exempted lamps on the ground that the rules do not permit such a reversal and requires 8% of the value of the exempted clearances to be paid.

4. The lower appellate authority has allowed the appeal of the respondents setting aside the order of the original authority relying on the Hon'ble Supreme Court's decision in the case of Chandapur Magnet wires (P) Ltd. v. CCE, Nagpur . Hence. this appeal has been filed by the department.

5. Shri M.K. Srivastava, learned SDR appearing for the department states that as per the existing rule at the material time (Rule 57AD of the Central Excise Rules, 1944), there is no provision for reversal of credit of duty taken in respect of exempted goods. He submits that the respondents were required to pay 8% of the price of exempted final product since they did not segregate the inputs nor maintained separate accounts. In support of his argument, he cites the decision of the Tribunal in the case of CCE, Jaipur-II v. Maa Kamakhya Marbles (P) Ltd. . He also cites the circulars dated 19-8-2002 and 28-8-2003 issued by the Board and states that the lower appellate authority is bound by these circulars. He, further, states that the decision of the Hon'ble Supreme Court in the case of Chandrapur Magnet (supra) was given in the context of a particular notification and not in the context of Rule 57AD of the Central Excise Rules, 1944. The learned SDR also states that permitting reversal of the credit when the rule does not provide for the same would render the rule nugatory.

6. It is argued by the learned Counsel for the respondents that the ratio of the decision of the Hon'ble Supreme Court in the case of Chandrapur Magnet (supra) has also been followed by the Tribunal in the following cases, facts of which are similar to the present case:

(i) Rochees Watches Ltd v. CC, Jaipur

(ii) CCE, Chandigarh v. Jagan Tubes Ltd. 2004 (175) E.L.T. 200 (Tri. -Del.)

(iii) CCE, Ahmedabad-II v. Core Health Care Ltd. 2004 (178) E.L.T. 490 (Tri. - Mum.)

7. After considering submissions from both sides and perusal of the case records as well as cited case laws, we find that there is no dispute in the present case that a common input has been used for both dutiable and non-dutiable lamps and that it is not possible to segregate the same input for separate use and it has also not been possible to keep separate accounts. The spirit of Rule 57AD is that input duty credit cannot be allowed to exempted final product. Though the decision in the case of Chandrapur Magnet (supra) has been rendered in the context of an exemption notification, the ratio of the said decision holding that reversal of credit before clearance of the exempted goods amounts to non-availing the credit, when it is not possible to segregate the inputs, is applicable in our view to facts of this case and we find that in several decisions cited by the learned Advocate for the respondents, the Tribunal has applied the said ratio in similar cases. We also note mat the original authority has not disputed the reasonableness of the formula adopted by the assessee for reversing the credit amount. We are also of the view that it will be grossly unjust to ask the respondents to pay a huge amount of Rs. 1,09,21,592/- when the inadmissible credit amount is only Rs. 87,569/- in respect of the inputs used in exempted lamp.

8. The contrary decision cited by the learned SDR in the case of Maa Kamakhya Marbles (supra) cannot be applied in this case as ratio of the said decision is clearly contrary to the decision of the Hon'ble Supreme Court in the case of Chandrapur Magnet (supra). We also note that the wordings of the cited rule and the cited circulars do not deal with a situation when it is not possible to segregate the inputs, whereas such a situation has been dealt by the Hon'ble Supreme Court's decision in the case of Chandrapur Magnet (supra).

9. In view of our findings as above, we are of the opinion that the impugned order passed by the lower appellate authority setting aside the demand and penalty is reasonable and the same does not call, for any interference. The department's appeal is accordingly dismissed.

(Dictated in open Court)