Commissioner of C. Ex. Vs. Leader Engineering Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-24-1996

Reported in : (1997)(92)ELT557TriDel

Appellant : Commissioner of C. Ex.

Respondent : Leader Engineering Works

Judgement :

1. All these appeals filed by the Commissioner of Central Excise, Chandigarh against the Common Order of the Commissioner of Central Excise (Appeals), Chandigarh involve three issues relating to availment of Modvat credit, firstly, the Assistant Commissioner has taken objection to the respondents herein availing of Modvat credit on the basis of duplicate copy of gate passes which the Assistant Commissioner says is not a document prescribed under Rule 57G (2) as evidencing payment of duty on the input. Secondly, the Assistant Commissioner has disallowed deemed Modvat credit that is without production of document evidencing payment of duty in terms of the Government of India order issued for the purpose under Rule 57G (2) on the ground that the inputs in question have been cleared directly from the factory of the manufacturer. Supplier of the input and, therefore, they have been cleared under exemption. Thus, they are recognisable as non-duty paid meriting the disallowance of Modvat credit in terms of the Board's order for the purpose under which the facility of deemed credit it not available to inputs which are clearly recognisable as non-duty paid.

Thirdly, the Assistant Commissioner has denied Modvat on foundry fluxes chemicals used in the preparation of moulds on the ground that these are not used in or in relation to the manufacture of their final product which are valves and cocks'. On the first issue the Commissioner (Appeals) directed the Asstt. Commissioner to compare the duplicate Gate passes with originals. On the other two issues Commissioner allowed Modvat credit.

2. We have heard Shri Jangir Singh, the learned Departmental Representative and Shri S.L. Chopra, the learned Counsel appearing for respondent. So far as the eligibility of Modvat of the foundry fluxes chemicals are concerned, this is directly covered by the Larger Bench decision of the Tribunal in the case of Shri Ramakrishna Steel Industries Ltd. v. Collector of Central Excise, Madras, reported in 1996 (82) E.L.T. 575 (Tribunal) wherein the Larger Bench has held that chemicals or resin which are used in the sand mixture for the purpose of producing sand mould are inputs used 'in relation to manufacture of final product', the final product namely, steel castings. The ratio is directly applicable, therefore, we hold that the denial of Modvat of foundry fluxes is bad in law. The Respondents have rightly been held eligible for Modvat credit on these inputs. On the next issue relating to the deemed credit, again the matter is covered by a Larger Bench decision in the case of Machine Builders v. Collector of Central Excise, Bolpur, reported in 1996 (83) E.L.T. 576 (Tribunal) wherein the Larger Bench has held that the mere existence of exemption notification is not sufficient to show that the input is wholly exempt from duty or clearly recognised as not being duty paid or charged to Nil rate of duty. The Larger Bench held that the consequence will automatically follow only if it is an unconditional exemption notification. Where, however, the notification grants conditional exemption the Larger Bench held that it was for the Department to show that the inputs have been cleared by the manufacturer of the input duty free on fulfillment of the condition for the exemption. When the controversy arises in the appellate forum it is for the Revenue to satisfy Appellate forum that the conditions are satisfied in the given case and that the exemption has taken effect. In the present case it has not even been indicated as to under what notification the Department holds the inputs have been cleared duty free by the manufacturer-supplier of input from their factory. Therefore, we hold that the denial of the deemed credit can be lawful only on the Department establishing the

clearance of the inputs in question from the factory of the manufacturer thereof under the notification concerned fulfilling the conditions thereof for the exemption. The denial of the deemed credit in this case in the manner done of the Assistant Commissioner is certainly, therefore, not sustainable at all. As regards the third issue, we find that the Department has really no ground to be aggrieved with the direction given by the Commissioner (Appeals) in this regard who in the impugned order has only directed the Assistant Commissioner to compare the duplicate gate pass with the original and to extend the credit if the Assistant Commissioner is satisfied that the particulars in both tally.

It is very fair direction on the facts of this case with which we do not feel inclined to interfere.

2A. The appeals are disposed of by holding that the foundry fluxes are eligible inputs under Rule 57A. Deemed credit cannot be denied merely on the presumption that they must have been cleared by the manufacturer-supplier under exemption without any enquiry as to the factual position whether the condition for the exemption have been satisfied or not. It is further held that the direction given by the Commissioner (Appeals) to grant Modvat credit on the Assistant Commissioner, being satisfied that the particulars in the duplicate gate pass tally with the original is a direction with which the Tribunal is not inclined to interfere as it is well-founded and reasonable. The appeals are disposed of in the above terms.