Collector of Central Excise Vs. Bajaj Sons (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-27-1996

Reported in : (1997)(90)ELT230TriDel

Appellant : Collector of Central Excise

Respondent : Bajaj Sons (P) Ltd.

Judgement :

1. In this appeal filed by the Revenue, the matter relates to the availment of deemed Modvat credit in respect of the inputs - M.S.Rounds/Flats/wire and other forged items of iron and steel purchased from the open market when used in the manufacture of motor cycle parts and other items falling under Heading Nos. 87.14, 83.13 and 72.03 of the Central Excise Tariff as in force from 28-2-1986. The respondent M/s. Bajaj Sons (P) Ltd., Ludhiana had taken the deemed credit on the above mentioned inputs, which they had purchased from the open market, at the rate of Rs. 365 per M.T. They have taken deemed credit on the understanding that such credit was allowed under Ministry's Order No.B22/5/86/TRU dated 7-4-1986 issued under Rule 57G(2) of the Central Excise Rules, 1944. A show cause notice was issued to the respondent on 30-4-1987 alleging that while taking deemed credit on the inputs they had not given proper description relating to those inputs had not submitted the proper documents or any other evidence which could prove that the duty liability on these items of iron and steel had been properly adjusted. They had not fulfilled the conditions as laid down in the Ministry's order dated 7-4-1986 aforesaid. For period from January 1987 to

March 1987 a duty of Rs. 40272.49 was demanded under Section 11 A of the Central Excises & Salt Act, 1944. The matter was adjudicated by the Assistant Collector of Central Excise, Ludhiana who under his order dated 26-6-1987 held that as the inputs enjoyed full exemption from payment of duty in terms of Notification No.208/83-C.E., dated 1-8-1983 as amended, the said inputs purchased from the open market were non-duty paid and the deemed credit was not admissible. The order of the Assistant Collector of Central Excise, Ludhiana was set aside by the Collector (Appeals) of Central Excise, Delhi on the ground that the department had not disputed the onus of proof either that the inputs in dispute were clearly recognisable as non-duty paid or that they were charged to nil rate of duty. The Revenue had come up in appeal on the ground that the Modvat credit was allowable on production of documents subject to the fulfilment of conditions laid down in the declaration for which there is an enabling provision under Rule 57G(2) of the Rules. Under Notification No.208/83-C.E. no duty was chargeable on the inputs in question and the matter was not covered by the Ministry's order dated 7-4-1986.

2. The matter was posted for hearing on 27-9-1996. Shri Kulvinder Singh, Advocate had filed written submissions and had prayed that the matter may be disposed of in the light of the written submissions. For the appellant/Revenue Shri M. Jayaraman, JDR is present. He briefly stated the facts and referred to the Tribunal's larger bench decision in the case of Machine Builders v. C.C.E. - 1996 (83) E.L.T. 576 (Tribunal). He submitted that the inputs in question in this proceeding enjoyed exemption from duty under Notification No. 208/83 which was the subject matter of Appeal No. E/384/88 before the larger bench referred to above. The Tribunal had held that the benefit of deemed credit was not available to the assessee. He referred to Para 25 of the decision.

3. We have carefully considered the matter. The respondents were bringing iron and steel materials like M.S. Rounds/flats/wire and forged items which were purchased from the open market. These inputs were for use in the manufacture of motor cycle parts. These items fall under Heading Nos. 87.14, 83.13 and 72.03. They have no duty paying documents. Under proviso to Sub rule (2) of Rule 57G of the Rules no credit could be taken unless the inputs were received in the factory

under the cover of a gate pass, and AR-1, Bill of Entry or any other document as may be prescribed by the Central Board of Excise & Customs in this behalf evidencing the payment of duty on such inputs. In this case obviously the inputs had been recovered without the cover of a valid duty paying document. The Ministry under their Order S/22/5/86/TRU, dated 7-4-1986 conveyed their decision that the deemed credit on inputs as specified in Column 2 of the table appended to that order purchased from outside and lying in the stock on or after 1-3-1986 for use in the final products as specified in Notification No.177/86-C.E., dated 1-3-1986 was allowable at the rates specified in Column 4 of the said table subject to the fulfilment of the prescribed conditions. No credit was allowable in the following situations :- (i) if in respect of any inputs the credit of specified duty paid thereon had already been availed of under any Rule or Notification granting such credit, (ii) if such inputs are clearly recognisable as being non-duty paid or charged to nil rate of duty or (iii) if in respect of any inputs their reduction of duty as provided under proviso to Notification No. 55/86-C.E., dated 10-2-1986 was claimed on the ground that the inputs had been manufactured with the aid of electric furnace and documentary evidence exists to show that the reduced duty had been paid on such inputs. In such cases only actual duty paid was to be allowed. Under Notification No. 208/83-C.E., dated 1-8-1983 as amended exemption was granted to the final products which were made from any goods of the description specified in the corresponding entry in Column 2 of the table annexed to that Notification on which the duty of excise leviable under the Act had already been paid. It was explained that for the purposes of that Notification old stocks of inputs except such inputs as are clearly recognisable as being non-duty paid shall be deemed to be inputs on which duty had already been paid. This explanation related only to the inputs. The final products as described under Column 3 of the table annexed to that Notification were exempted from duty. In the present proceeding the inputs of the respondents were the final products as mentioned in the table annexed to that Notification. Their final products were motor cycle parts which were classified under different tariff entry. As the Notification was worded, "final products" were completely exempted from duty, and as we have stated above, the final products of Notification 208/83-C.E. were "inputs" for the respondents before us.

4. In the case of Machine Builders v. C.C.E. - 1986 (83) E.L.T. 576 (Tribunal) among others, the interpretation of Notification No.208/83-C.E. " was before the larger bench of the Tribunal. With regard to Appeal No. 384/88 before the larger bench of the Tribunal it was referred that the respondents in that case were the manufacturer of bolts and nuts falling under Heading No. 83.13/13.10 of the Tariff Act.

They used as their inputs steel wires falling under Heading No. 7213.90 which were purchased by them from the units producing the same from wire rods falling under sub-heading 7209.90. The Assistant Collector had held that the appellant was not entitled to deemed credit in respect of the inputs under Government order dated 7-4-1986 since steel wire used as input is clearly recognisable as nil duty paid goods. The Collector (Appeals) set aside the order holding among others that the Modvat credit would be available to wires brought from the market and the position would not alter merely because the appellants purchased the same directly from the drawing units. With regard to this appeal the Tribunal in Para 25 of their order held as under : "Respondent purchases steel wire from units redrawing the same from duty paid wire rod which is exempt from duty under Notification No. 208/83. Respondent use the steel wire to manufacture bolts and nuts.

The input used by the respondent definitely enjoyed duty exemption and hence the case attracts the second exception in the Government order dated 7-4-1986. Collector (Appeals) was in error in holding that the benefit which respondent would have enjoyed had he purchased the steel wire from the market cannot be denied to him.

The order of the Collector (Appeals) has to be set aside and the appeal by the Revenue has to be allowed." 5. In the present case the application of Notification No. 208/83 is not disputed. From the very beginning the respondents had claimed that their inputs were covered by Notification No. 208/83-C.E. They have not purchased the inputs from the manufacturer but from the open market.

This will not change the position as has been clearly brought out in the Tribunal's larger bench decision referred to above.

6. The respondents have relied upon a number of decisions of the Tribunal but these decisions were rendered before the larger bench decision referred to above.

7. Respectfully following the Tribunal's larger bench decision we find that the order passed by the Collector of Central Excise (Appeals) is not maintainable and we set aside the same. As a result the appeal filed by the Revenue is allowed.