

Powerflow Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-30-1996

Reported in : (1997)(92)ELT574TriDel

Appellant : Powerflow Ltd.

Respondent : Collector of Central Excise

Judgement :

1. These are two appeals filed by M/s. Powerflow Ltd., Bangalore, being aggrieved with the common Order-in-Appeal Nos. 349-350/87(6), dated 30-11-1987 passed by the Collector of Central Excise (Appeals), Madras.

2. The matter relates to the availment of Modvat credit and duty exemption under Notification No. 69/86-C.E., dated 10-2-1986 (as amended) in respect of the same inputs and the same final products during the same period manufactured by the same manufacturer in the same factory. The appellants were availing of the exemption in respect of their final products "winding wires" made of copper under Notification No. 69/86-C.E., aforesaid. The exemption under the said notification was subject to the condition that no credit of the duty paid on unwrought copper in any form or wrought wire rods of copper used in their manufacture has been taken under Rule 56A or Rule 57A of the Central Excise Rules, 1944. The appellants were availing of the said exemption and no credit of the duty paid on their inputs was taken by them. Subsequently, they filed classification list in which they wanted the benefit of Notification No. 69/86-C.E. for a part of the inputs and part of the final products manufactured by them during the same period and in the same

factory. The request was rejected and the appellants were directed to avail of the Modvat facility in respect of the whole of their production. The Collector of Central Excise (Appeals), Madras, held that the order of the Asstt. Collector as correct. He observed that "the Modvat facility has to be availed of, by an assessee or a manufacturer and in the same factory, the declared inputs cannot be kept as partly duty paid and partly Modvat inputs.

Thus, contention of the appellants is not accepted." 3. Both the appeals were heard on 30-10-1996, when Shri T.Vishwanathan, Advocate, appeared for the appellants. Shri M. Jayaraman, JDR, is present for the respondents/Revenue.

4. Shri T. Vishwanathan, Advocate, stated that there is no bar under the Modvat scheme that for the same manufacturer, for the same factory, for the same inputs and for the same final products, the assessee could not avail partly the exemption under applicable notification and partly clear the goods on payment of duty after availing Modvat credit. It was his plea that they had submitted before the lower authorities that the inputs and the final products could be segregated. He referred to the Supreme Court decision in the case of Chandrapur Magnet Wires (P) Ltd. v. Collector of Central Excise, Nagpur -1996 (81) E.L.T. 3 (SC). He also referred to the Board's clarification as given by the appellants in their grounds of appeal.

5. In reply, Shri M. Jayaraman, JDR, stated that the assessee could work either under the Modvat scheme under which the final products had to pay the central excise duty or they could work under any applicable exemption notification in which there is no duty on the final products if the conditions as laid down in the notification are specified. He pleaded that for the same inputs and for the same final products manufactured by the same manufacturer in the same period, there could not be a situation when on some of the final products Modvat credit is availed and for the same the exemption is availed.

6. We have carefully considered the matter. The appellants had filed a classification list bearing No. 151/86 effective from 22-8-1986 in which they sought an approval of paying 15% basic excise duty in respect of the winding wires (enamelled wires other than square or rectangular) made of copper on reels/plastic bobbins. For the same product in the same classification list, they

sought approval of nil rate of duty citing the Notification No. 69/86-C.E., dated 10-2-1986 (as amended). The Assistant Collector ordered that the rate of duty in both the cases will be 15% adv. as the assessee had opted to work under the Modvat scheme.

7. Under Notification No. 69/86-C.E., dated 10-2-1986 winding wires made of copper were exempted from the whole of the duty of excise, if they were made from wrought wire rods of copper falling under Heading No. 74.03 on which the appropriate amount of duty leviable thereon had already been paid and no credit of the duty paid on unwrought copper in any form or wrought wire rods of copper used in their manufacture had been taken under Rule 56A or Rule 57A of the said Rules. If the winding made of copper were not covered by the said conditions as given against Serial No. 1 of the Table annexed to that Notification No. 69/86-C.E., then the applicable rate of duty was 15% adv.8. Under Rule 57G of the Central Excise Rules, 1944, every manufacturer intending to take credit of the duty paid on inputs under Rule 57A was required to file a declaration with the Asstt. Collector of Central Excise, having jurisdiction over his factory, indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products and was to furnish such other information as the jurisdictional Assistant Collector (now Assistant Commissioner) may require.

9. The manufacturer wants to avail of the Modvat credit on part of the inputs and on part of the final products manufactured during the same period and manufactured in the same manufacturing premises which is not provided under the said Rule 57G.10. The learned Advocate had referred to the Board's clarification. The Board's clarification reads as under : " "Question 24: How is the duty liability to be discharged in a case where part of the inputs is used in or in relation to the manufacture of final products which are exempt from duty? Answer : Modvat credit is not available if the final products are fully exempt or are chargeable to nil rate of duty. However, where a manufacturer produces along with dutiable final products, final products which are exempt from duty by a notification (e.g. an enduse 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. Similar procedure may be followed in respect of exports under bond where the manufacturer is simultaneously availing of full exemption under Notification No. 175/86-C.E., dated 1-3-1986." 11. This clarification relates when there is an exemption notification such as an enduse based notification. In the present proceedings, the exemption relates not to the enduse but the duty paid character of the inputs and is subject to the specific condition that Modvat credit is not availed of. As the appellants sought to avail Modvat credit, they were not covered by the exemption and were required to pay the duty at the effective rate of 15% adv. The Collector (Appeals) had rightly held that for the same factory, same inputs and same manufacturer, there could not be inputs which could be kept as partly duty paid and partly Modvat inputs. The Board's clarification also provides that at the initial stage, the credit could be taken on all the inputs and it is only at the stage of the exemption that the credit could be debited. In the present case, there is a specific condition in the Notification No.69/86-C.E. that if credit of the duty paid on the inputs had been taken, then no exemption is available. Reference has also been made to a letter F 267/127/88-CX, dated 9-8-1988.

12. The classification list in respect of which the impugned orders have been passed was filed on 27-5 1986 and was effective from 22-5-1986. Chandrapur Magnet Wire (P) Ltd. v. Collector of Central Excise, Nagpur - 1996 (81) E.L.T. 3 (SC), the Supreme Court had held that reversal of Modvat credit was permissible to avail exemption.

In that case before the Supreme Court the similar inputs were used in the manufacture of dutiable as well as exempted final products. The amount of Modvat credit taken on the inputs utilised in the manufacture of final exempted products, it was held by the Supreme Court that it could be debited in the Modvat account. In the proceedings before us, the appellants did not seek exemption on whole of their production.

They sought to pay duty on part of their production and to avail exemption on the rest of the product. We find that in the notification under consideration, specific

condition was built that no Modvat credit on the inputs will be taken. Thus, it is not a case where exemption, could be availed of after taking the Modvat credit. It was specifically held by the Supreme Court if an assessee wants to avail exemption, then the Modvat credit had to be reversed. In this case after the classification list was amended, the appellants paid excise duty on whole of their production and did not avail of any exemption. Thus, we find that the situation in the case before us was different from the situation before the Hon'ble Supreme Court, as the Supreme Court had held that on reversal of the Modvat credit, the assessee could not be said to have taken credit of duty on the inputs utilised in the manufacture of exempted final products. As the Collector of Central Excise (Appeals) had only held that the assessee could either avail of the Modvat credit or avail of the exemption, we find no infirmity in his view. If the appellants want exemption in respect of whole of their production, then, as held by the Supreme Court, the exemption could not be denied to the final products, but only after the reversal of the Modvat credit already taken. Thus, we find that the facts in the present case are distinguishable.

14. Taking all the relevant considerations into account, we do not find any merit in both the appeals and the same are rejected.

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