Teletube Electronics Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-24-1997

Reported in : (1997)LC657Tri(Delhi)

Appellant : Teletube Electronics Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. This is an appeal against the order of Collector (Appeals), Ghaziabad dated 30-5-1994.

2. Ld. Counsel submitted that the appellants are engaged in the manufacture of Cathode Ray Tubes falling under Heading 85.40 in their factory for the last about 20 years.

3. During the course of manufacture of picture tube, apart from other items, the following items are used.

4. The A.C. denied the Modvat credit on the above mentioned items and the appellants went into appeal before the Collector (Appeals). The case was remanded back to the A.C. for want of show cause notice.

Accordingly, the A.C. issued a show cause notice to the appellants and finally denied the Modvat credit on the above items. Aggrieved against the said order, the appellants again preferred an appeal before the Collector (Appeals) who modified the orders of the A.C. He allowed Modvat credit on H.C.A. and H.F.A. but upheld the orders of A.C. so far as eligibility of Modvat credit on Tungsten Coil and Caustic Soda is concerned. The nature and use of both the items are as follows :- Caustic Soda. It is used for making De-ionised water. De-Ionised water is used for making solution of Potassium Silicate and Barium Nitrate. Such solution forms Barium Silicate which is used as an adhesive for phosphor coating on the screen.

5. The Collector (Appeals) while upholding the stand of A.C. has referred to Order-in-Appeal Nos. 35-36/CE/MRT/94, dated 29-4-1994, in which he had already decided the said issue. Neither the copy of the said order was supplied to the appellants nor the operative part of the said order was referred to in the instant order. In view of the above, the appellants are not able to deal with the findings of Collector (Appeals). So far as the use of Caustic Soda is concerned, the Collector (Appeals) has himself agreed that the said item is used for phosphor coating on the screen but at the same time he has observed that it is not used in or in relation to the manufacture of final product.

6. The issue of admissibility of Modvat credit on Caustic Soda has recently been settled by the Hon'ble. Tribunal in the case of Samtel India Ltd. -1994 (71) E.L.T. 737. Since the unit of appellants and Samtel India Ltd. are Companies engaged in the manufacture of same item, the findings of Hon'ble Tribunal in that case are squarely applicable to the present case also.

Tungsten Coil. The Coil is made of Tungsten and it is used in the manufacture of picture tube and it spreads the aluminium slug in the inner surface of glass shell. Without this coating process, the glass shell cannot move for further processes. The coil becomes scrap after few uses and it has got no value at that time. The classification heading of Tungsten Coil 8101.00 itself shows that even the Tariff does not categorise such an item under the heading for machines, machineries, mechanical appliances or electrical equipments. However, there are a number of decisions of CEGAT which upheld that similar type of goods are eligible to be treated as input. Some of them are as under :-Allied Electronics and Magnetics Ltd. v. CCE -1992 (62) E.L.T. 129 7. Ld. DR drew attention to the impugned order and reiterating the department's view point focussed attention on the discussion part of the order and in particular to the following finding of the Assistant Collector

:- "The party himself admitted that the Tungsten Coil is used in spreading the aluminium slug in the inner surface of the glass shell. The tungsten coil becomes scrap, after few uses. As such tungsten coil is not used in or in relation to the manufacture of Picture Tube i.e. their final product. Its function is like any appliances/tools. The item does not constitute the definition of input as laid down under explanation to Rule 57A. Party's contention that Hydrofluoric Acid is the only acid capable of reacting with glass sufficiently to remove any impurities like grease, dirt etc.

is true but it is not used in the manufacture of final product and thus would not qualify of the definition of input to avail the Modvat. This input is actually used in the clearing of glass shell and not as input in the final product. Its function is like a tool which remove dirt, grease etc., from the surface of glass shell. The items Hydrochloric Acid and Caustic Soda are used in the washing of glass shell. This fact was declared by the party in their process of manufacture submitted with the declaration stated by the party.

Barium Silicate which acts as an adhesive, is obtained by the reaction of Potassium Silicate and Barium Nitrate and these must be free of ions. To remove these ions, they use De-ionised water and de-ionised water they obtained from caustic soda. Therefore, the caustic soda is used to remove/wash the ions which are present in the inputs potassium silicate and barium nitrate. The caustic soda is not used in or in relation to the manufacture of picture tube." 8. He emphasised that in view of the above position, the Collector was justified in passing the impugned order.

9. I have considered the above submissions. I observe that there is no dispute on facts; and caustic soda is used for working glass shells and also for making de-ionised water which in turn is used for making solution of potassium silicate and barium nitrate which on reaction form barium silicate used as an adhesive for phosphor coating on the screen. Therefore, the entire activity starts with the use of caustic soda in a process relating to manufacture of the goods and the fact that the process is a multi-step process does not alter the basic fact of use of caustic soda in relation to the manufacture of the final product. Therefore, the item is

eligible for Modvat credit.

10. The ld. Counsel is right in pointing out that this item has already been held as eligible for Modvat in the case of Samtel India Ltd. -1994 (71) E.L.T. 737 in which it has been held that caustic soda and hydrofluoric acid being essential inputs for the process of de-ionisation, which is essential for the manufacture of T.V. picture tubes were eligible for Modvat.

11. As regards tungsten coil, it is undisputably used as an element to vaporise aluminium slug in aluminiser. In response to Bench queries ld.Counsel had produced technical literature in the form of Hand Book of Thin Film Technology by Leon I. Marssel & Reinhard Glang (IBM Corp.

N.Y.). It is however observed that the reference to the first evaporated thin films which were probably the deposits which Faraday obtained in 1857 when he exploded metal wire in an inert atmosphere, is too remote for our consideration and had no direct bearing on our case.

The examples of various types of coating in various industries including that of the manufacture of cathode ray tubes also does not help us. The same is true of the development of special techniques for evaporation of alloys. Again the reference to the construction and use of vapour source is too general to be of any direct relevance. The same observation can be made with regard to the properties of refractory metals and the fact that their utility is limited to evaporants which can be affixed to the source. Again the fact that tungsten is very brittle and breaks at room temperature does not help us in any manner and the same again is true of reference to electrical connection to wire and foil sources. We are also not concerned with oil sealed rotary pumps in any manner. Therefore the portion of the literature pointed out does not help us. However, the fact remains that the process of use of this item described by the appellants has not been contested or shown to be wrong by the department. Further, the fact that the technical literature filed by the ld. Counsel also incorporates reference to tungsten element as predominant vapour species and indicates evaporation by resistance heating or touching and also mentions that simplest vapour sources are resistance heated wires and metals foils of various types, and it does, to an extent support, that even otherwise the technical aspects explained by the ld. Counsel were correct and in view of the fact that the item is consumed during the process and is required to be replaced every time indicates that it is a consumable item used during the course of manufacture of the final product. Therefore, this item is also eligible for the benefit of the Modvat claim. Looking it the other way round the A.C.'s findings as part or accessory does not seem to have any basis in view of the above technical position. Therefore, I hold it eligible for the benefit claim.

The case law cited by the ld. Counsel is not relevant for our purposes.

However, in view of the above position, the impugned order is set aside insofar as they relate to the above items and the appeal is accepted.