Telemecanique and Controls (i) Vs. Collr. of C. Ex.

Telemecanique and Controls (i) Vs. Collr. of C. Ex.

SooperKanoon Citation : sooperkanoon.com/11457

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-02-1997

Reported in : (1997)(96)ELT366TriDel

Appellant : Telemecanique and Controls (i)

Respondent : Collr. of C. Ex.

Judgement :

1. The appellants filed this appeal against the Order-in-Appeal No.115/CE/MRT/97 dated 27-1-1997. In this case the benefit of Modvat credit on the inputs is denied on the ground that appellant has not filed proper declaration of inputs under Rule 57G of the Central Excise Rules, 1944.

2. Ld. Counsel appearing on behalf of the appellant submits that the appellant has filed a declaration on 2nd March, 1986 and in the declaration he gave the heading and sub-heading and description of the goods. He submits that the Commissioner of Central Excise in the order wrongly held that proper declaration of inputs was not filed. He submits that inputs were broadly described and specific sub-heading of the Tariff was given in the declaration and the inputs were received under the proper duty paying documents and were used in the manufacture of final product. Hence they are entitled for the benefit of Modvat credit.

3. Ld. JDR appearing on behalf of the respondents submits that in the present case the appellant has not filed the proper declaration. They have not specified the inputs. They simply described the goods as parts of the Heading No. 85.36 and

85.37 of the Central Excise Tariff, 1985.

He submits that inputs should be specifically mentioned. The appellants are availing the benefit of Modvat credit on Bimetal Cladcon having Silver Nickle Layer CRCA empty cabinets and they have not described these items specifically in the declaration. He therefore prays that the appeal be disallowed.

4. Heard both sides. In this case, the appellants are engaged in the manufacture of electric goods falling under Chapter 8536.90 of the Central Excise Tariff Act, 1985 i.e. Contractors, Overload Relays, Electrical timers and motor starters and they are availing the benefit of Modvat facility under Rule 57G of the Central Excise Rules, 1944.

They filed declaration on 20-3-1986 and described the inputs as under: Heading Sub-heading Description of the goods Parts of heading 85.38 8538.00 85.36 and 85.37 On the basis of this declaration, the appellants took Modvat on Bimetal Cladcon having silver nickel layer and on CRCA empty cabinets. The revenue is not alleging that the goods were not received by the appellants or these were not used in the manufacture of final product.

The Revenue is only objecting that proper declaration of inputs under Rule 57G of the Central Excise Rules is not filed. The entry 85.38 of Central Excise Tariff, 1985 includes parts suitable for usefully or principally with the apparatus of Heading 85.35,85.36 and Heading ,85.36 includes electric apparatus for searching or projecting electric circuits or for making connections to or in electric circuits (for e.g.

switches, relays, fuses, search suppressors, contactors, sockets, lamp holders, junction boxes) on a voltage not exceeding 1000 volts and Heading 85.37 includes boards, porches. The appellants specifically mentioned in the declaration the parts of Heading No. 85.36 and 85.37 and the Tribunal in the case of British Physical Laboratory v. C.C.E.reported in 1994 (74) E.L.T. 593 held that the existance of declaration is substantial compliance and procedural irregularity is one thing and the total absence of declaration, legal infirmity is another thing. In the present case, the appellants filed a declaration declaring the parts of particular heading of

Tariff as inputs and the department is not disputing the receipt of the inputs or their use in the final product. In view of the above discussion, the impugned order is set aside and the appeal is allowed.