

Aask Engineers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-07-1997

Reported in : (1998)(97)ELT99Tri(Mum.)bai

Appellant : Aask Engineers

Respondent : Commissioner of Central Excise

Judgement :

1. The appeal is directed against the order of the Commissioner of Central Excise & Customs (Appeals), Pune captioned above. The appellants manufacture Nuts and Bolts, they supplied certain quantities of bolts to a customer M/s. Kirloskar. These were rejected and returned by the customer because on defects and the customers sent it back to the appellants on payment of duty thereon, as if it is their [own] manufacture in terms of Rule 57F(1) of the Central Excise Rules, 1944.

The appellants removed the defects cleared them again on payment of duty after availing Modvat credit on returned bolts. The Department held that since on the returned goods no process of manufacture was undertaken the appellants cannot take Modvat credit of the duty paid thereon.

2. Shri V.S. Khanwalker, the Id. Consultant for the appellants submitted that the case is covered by the Tribunal decision in the case of Commissioner of Central Excise, Coimbatore v. Hirsch Watch Straps Pvt. Ltd. 1997 (91) E.L.T. 174 (Tribunal) had held therein that goods having been received on payment of duty and when the final product is also being cleared on payment of duty, the Modvat

credit on the returned Watch straps which were later on cleared, after re-sizing were eligible for Modvat credit.

3. Shri D. Gurnard the Id. JDR contended that there are two decisions of the Tribunal contra in the case of Bharat Gears v. Commissioner of Central Excise, Mumbai - 1996 (87) E.L.T. 668 (Tribunal) and in the case of ICI India Ltd. v. Commissioner of Central Excise, Calcutta -1997 (89) E.L.T. 216 (Tribunal). In both these decisions the Tribunal has held that defective returned articles are not inputs on which Modvat credit can be taken, as there is no process of manufacture involved in removing the defects.

4. The submissions made by both the sides have been considered carefully. It is found that the goods namely bolts have been cleared by the appellants, in the first time has completely manufactured articles on payment of duty. The Customer has returned the goods, because of certain defects in the manufactured articles; duty has been paid thereon, by the customer because they were inputs on which the customer has taken credit of duty, and if the customer does not use it in the manufacture of his final product, he can clear it as such only on payment of duty thereof as if it was his manufacture. This is provided for under Rule 57F(1). In such a situation therefore the operation undertaken on the returned goods on the appellants factory is only removal of defects which does not amount to manufacture. The fundamental rule of Modvat credit is that it is given on the duty paid on inputs which are used in or in relation to the manufacture of finished product. When this element is absent in the situation as such in the present case of the appellants, the two decisions cited and relied upon of the Tribunal by the Id. DR are more apt to the situation. In Bharat Gears case, which is a decision of a Two Member Bench, it has been held that reconditioning of an article does not amount to manufacture and Modvat credit is not available on defective gears received back for reconditioning. Similarly case of ICI India Ltd., it has been held that the process of conversion of defective paints and rubber chemicals (inputs) into fresh paints and rubber chemicals is not manufacture, and Modvat credit is therefore inadmissible thereon. It is further noticed that the decision of the Tribunal relied upon by the appellants is a Single Member decision. In these circumstances the denial of Modvat credit on the returned defective goods to the appellants by

the lower authorities is sustainable and it is upheld. However, the Id. Consultant has also pleaded that in any case the penalty on the appellant Rs. 1,000/- on the appellant is not justified. One is inclined to agree with this contention, because the matter revolves round a question of interpretation of Rule 57F(1). Therefore the penalty on the appellant is set aside. The appeal is disposed of in the above terms.

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