Commissioner of Central Excise Vs. Roll Tubes Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-17-1997

Reported in : (1998)(98)ELT282TriDel

Appellant : Commissioner of Central Excise

Respondent : Roll Tubes Ltd.

Judgement :

1. The Revenue filed this appeal against the Order-in-Appeal No.103/CE/ALLD/95, dated 29-12-1995 passed by the Commissioner (Appeals), Central Excise, Allahabad.

4. M/s. Roll Tubes Ltd., Chaudagra, Bindki Road, Fatehpur (Respondents) are engaged in the manufacture of Pipes and Tubes falling under subheading No. 7306.90 of the Central Excise Tariff Act, 1985 and are registered with the Central Excise Department.

5. The party filed Modvat claim under Rule 57H of Central Excise Rules, 1944 for allowing credit amounting to Rs. 4,67,933.30 on 352.90 M.T. of waste and scrap of steel lying in stock on the date of filing Modvat declaration with the Department. Such credit under Rule 57H is only admissible on the inputs if they are used in the manufacture of final products which are cleared from the factory on or after 1-3-1994 and no credit has been taken by the manufacturer in respect of such inputs under any rule or notification.

6. A demand-cum-show cause notice was issued to the respondents as to why the Modvat credit on steel waste and scrap weighing 352.50 M.T.amounting to Rs. 4,67,933.30 should not be disallowed under Rule 57H keeping in view the provisions of Rule 57-1 of Central Excise Rules, 1944.

7. Without waiting for the decision of Show Cause Notice dated 7-7-1994 the party filed an appeal to the Collector (Appeals), Central Excise, Collectorate, Allahabad which was rejected the appeal as infructuous vide Order-in-Appeal No. 111-CE/APPL/ALLD/94/2595, dated 20-10-1994 and remanded the case to the Assistant Commissioner, Central Excise to complete the adjudication proceedings. The Assistant Commissioner, Central Excise vide his Order-in-Original dated 29-6-1995 disallowed the Modvat credit claimed by the under Rule 57H for Rs. 4,67,93.30 under Rule 57-1 of Central Excise Rules, 1944 read with Section 11A of Central Excises & Salt Act, 1944, on the ground that ferrous waste and scrap related to the period before 1-3-1994 and during that period pipe and tubes were exempted from duty in terms of Notification No. 202/88, dated 20-5-1988. He further held that Rule 57-H is not applicable in that instant case as ferrous waste and scrap obtained during the course of manufacture of pipes and tubes and cannot be considered as input.

8. The party filed an appeal before the Commissioner (Appeals), Central Excise, against the order and the ld. Commissioner (Appeals), Central Excise vide impugned order set aside the Order-in-original and allowed the appeal.

9. Ld. JDR submits that ferrous waste and scrap which was lying in the respondent's factory premises related to the period before 1-3-1994 during which it was exempted from duty under Notification No.171/88-C.E., dated 13-5-1988 and the final product (pipes and tubes) were also exempted in terms of Notification No. 202/88, dated 20-5-1988 which has been rescinded vide Notification No. 64/94, dated 1-3-1994.

Modvat credit under Rule 57H is admissible in respect of duty paid inputs lying on the relevant date and if such inputs are utilised in the manufacture of final products. Waste and scrap were neither duty paid in nature nor were it was utilised in the manufacture of final product by the said unit. Therefore, the case is not covered under Rule 57H of the Central Excise Rules.

10. He submitted that the waste material has not been used in manufacture of final product hence the allowance of credit under Rule 57H is bad in law and the same is inadmissible.

11. Heard Id, JDR Commissioner (Appeals) in the impugned order held that there is no dispute as regards the existence of such ferrous waste and scrap on 1-3-1994. The Commissioner of Central Excise in the impugned order allowed the appeal on the ground that Rule 57H lays down the condition that is such input are lying in the stock or which received in the factory on or after the first day of March, 1994 and if such imputs are used in the manufacture of final product which are cleared from factory on or after the first day of March, 1994 are fulfilled, therefore, the assessee can take credit on the duty paid on such inputs.

12. In the present case the credit on ferrous waste and scrap lying in the factory premises related to the period prior to 1-3-1994 and before 1-3-1994 pipes and tubes were exempted from payment of duty in terms of Notification No. 202/88, dated 20-5-1988. Rule 57H of the Central Excise provides that the Asstt. Commissioner may allow credit of duty paid on inputs received by the manufacture of immediately before or after obtaining the dated acknowledgement, if he satisfies that such inputs are lying in stock or received in the factory on or before 1-3-1994.

13. The Commissioner of Appeal, Central Excise has not considered the fact regarding the duty payment on the inputs i.e. on ferrous waste and scrap. In view of above discussion, impugned order is set aside and the matter is remanded to the Commissioner (Appeals), Allahabad for deciding the appeal afresh after granting Opportunity of personal hearing to the respondents. The appeal is disposed of by way of remand.