Mysore Kirloskar Ltd. Vs. Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-19-1998

Reported in : (1998)(59)ECC669

Judge : T Nambiar, L Ram

Appellant : Mysore Kirloskar Ltd.

Respondent : Central Excise

Advocate for Pet/Ap. : Shri. P.C. Anand

Judgement :

1. The present application is filed for the pre-deposit of the MODVAT credit of Rs. 40,85,343/-. The adjudicating authority allowed the benefit to the appellant. In allowing the benefit, the adjudicating authority at page 2 of the order, held as follows: It is relevant to state that there is no dispute so far as the admissibililty of modvat credit, as the assessee has filed the declarations as stipulated under the rules and also there is no dispute on the admissibility of credit on the inputs vis-a-vis the final products. As all the inputs are eligible for modvat credit for manufacture of their final product under Rule 57A, the only issue to be decided is whether the input credit entered in RG23A Pt. 11 of Ch. 73 can be utilised for payment of duty for clearing the final product falling under Ch. 84. In this regard it is relevant to cite CEGATS judgments in the case of CCE v. Nisha Conductors wherein the Hon'ble Tribunal held that there is no one to one correlation of input and finished product and credit accrued against one heading can be utilised for

other chapter heading, so long as all the final products are covered by the Notification issued under Rule 57A. Therefore, in view of the above judgment there appears to be a force in the assessee's argument. By virtue of the Hon'ble Supreme Court judgment in the case of UOI v. Kamalakshmi Finance Corporation the above CEGAT judgment is binding on the department.

2. In the appeal, the Commissioner (Appeals), held as follows: From the grounds given in the departmental appeal, I am quite satisfied that they are justified and the order of the Assistant Commissioner allowing Modvat Credit involved in the subject Order in Original No. 31/95 dated 17.7.95 is not correct, proper and legal. It is a fact that at the relevant time, as per the provisions of Rule 57A, 57F(1) and 57F(3), Modvat Credit can be availed on the declared finished product provided they are used in or in relation to the manufacture of finished product.

If the finished product is exempt, Modvat Credit cannot be allowed to be utilised for clearance of the said finished product. The Hon'ble Tribunal's decision cited by the department in their appeal are aptly applicable to the facts and circumstances of the case. In this case, the Assistant Commissioner has allowed Modvat Credit for the goods classified under Ch.84 i.e. finished castings with the inputs used in the manufacture of the finished product classifiable under Ch.73.

Therefore, rightly, they were not eligible to utilise the said input credit availed on inputs falling under Ch.73 for clearance of their finished product falling under Ch. 84. Hence, I find that the departmental appeal is correct and proper and therefore, has to be allowed.

3. The learned Chartered Accountant, Shri P.C. Anand, appearing for the appellants, contended before us that in the adjudication order, it was clearly mentioned that the appellants had declared both the final products falling under Chapter 73 and Chapter 84. He, therefore, pointed out that the inputs which are declared by the appellants are used for the production of both the goods falling under Chapter 73 as well as under Chapter 84. He, in this connection, pointed out thatthe decision of the Tribunal reported in the case of Nisha Conductors , it was held that there is no requirement for one to one correlation with respect to the finished product. In this connection, he pointed out that the decision which was

relied on by the learned Commissioner (Appeals), ,is not directly applicable to the facts of this case. It was his contention that the appellant had declared inputs as well as final products bothfalling under Chapter 73 and Chapter 84.

5. At this juncture, the learned Advocate produced a copy of the declaration which was produced before the adjudicating authority.

6. On a perusal of the above declaration, the learned SDR pointed out that originally the appellant had declared the above said inputs for the manufacture of the goods falling under Chapter 73. He pointed out that the goods fall under Chapter 73 are unmachined castings. It was pointed out that these unmachined castings, after machining, becomes machine tools which falls under Chapter Heading 84. He pointed out that as far as the inputs of Chapter 84 are concerned, the appellants made a declaration that unmachined castings are the inputs for those falling thereunder. He, therefore, pointed out that these facts are available in the above said declaration and, therefore, the whole case has to be looked into with respect to the above said declaration filed by the appellants.

7. On a query from the Bench, both the sides stated that these aspects were not taken into consideration either by the original authority or by the appellate authority.

8. We have considered the submissions. We find that the whole case has to be decided with respect to the declaration filed by the appellant under Rule 57G. On perusal of the impugned order the same goes to show that neither the original authority nor the appellate authority has discussed these aspects in detail. For the first time, the learned Chartered Accountant has produced the declaration before us. which was perused by the learned SDR.9. In this view of the matter, we are of the view prima facie, these orders had not discussed the factual aspects which are necessary for deciding the matter and in this background, we grant stay and by consent of both the sides, we heard the appeal.

10. After hearing both the sides, we are of the view that in order to decide the eligibility of the input credit, it was necessary for the adjudicating authority to apply his mind with respect to the declaration filed by the appellant under Rule 57G and,

thereafter, it should be found out whether the decision relied on by the department in , could be applied to the facts of this case.

Therefore, these factual aspects are required to be verified in this case.

11. In the result, the impugned order is set aside and we remand the matter back to the original authority for a de novo adjudication, after taking into consideration the above said declaration filed by the appellant and the factual aspects in the case must be discussed and the case laws, as cited should be applied to the case. This should be done after giving a personal hearing and in the light of the discussions which are made in the above said case laws, which are cited before us.