

Associated Switchgears Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-03-1998

Reported in : (1998)(103)ELT437TriDel

Appellant : Associated Switchgears

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellant filed this appeal against Order-in-Appeal No.480-CE/MRT/96 dated 7-10-1996. The benefit of Modvat credit of Rs. 79,8357-taken on C.R. Coils/Strips falling under sub-heading 7209.30 denied on the ground that they have not declared the input C.R.Coils/strips falling under sub-heading 7209.30 of the Central [Excise] Tariff Act., 1985 has made been described by the appellant by that declaration shall under 57G of the Central Excise Rule 1944.

2. Ld. Counsel appearing on behalf of the appellant submit that appellants had filed the detailed declaration declaring 33 items as inputs for their final products and they have declared strips of iron falling under Chapter No. 72 sub-heading 72.11 as inputs. He further submits that the Notification No. 177/86 dated 1-3-1986 provides only Chapter heading in respect of description of inputs and in respect of description of final products. He further submits that difference between Chapter Heading 72.11 and 72.90 is of only that Chapter Heading 72.11 includes flat rolled products of iron or non-alloyed steel of a width of 600mm and the Chapter 72.09 includes Flat Rolled Products of iron or non-Alloy Steel of a width of 600mm more. He submits that the product are same except the difference in width. The rate of

duty is also the same. He relied upon the decision of Tribunal in the case of CCE v. Ramakrishna Steel Industries reported in 1991 (34) ECC 213 and in the case of Bihar Caustic & Chemical Ltd. v. Collector of Central Excise, Patna [1993 (64) E.L.T. 332 (Tribunal)]. He submits that in this case the Tribunal held that Modvat credit cannot be denied on minor discrepancies in the description/classification of inputs. He therefore, prays that the appeals be allowed.

3. Ld. JDR appearing on behalf of the respondents submit that appellant has not filed any declaration in respect of C.R. Coil falling under sub-heading 72.09 of the Central [Excise] Tariff Act, 1985. He further submits that Rule 57G of the Central Excise Rules, 1944 provide that the assessee is to file a declaration indicating the description of final product and the input intended to be used in each of its final product. He submits that the appellant has not filed any declaration declaring the inputs falling under Chapter sub-heading 72.09 of the Tariff, therefore, they are not entitled for the benefit of the Modvat credit.

4. Heard both sides. In this case the appellants are taking credit in respect of duty paid on the C.R. Coil. Appellants filed a declaration in which they have declared strips of irons falling under Chapter No.72 and sub-heading 72.11 as input. The revenue objecting to this only on the ground that the inputs C.R. Coil falls under the description given under the sub-heading 72.09, therefore, the appellant has not mentioned the correct description of the inputs. The Tribunal in the case of CCE v. Shri Ramakrishna Steel Industries reported in 1994 (34) ECC 213 held that description of goods under Notification No.177/86-C.E., dated 1-3-1986 was Chapter Headingwise.

The essential requirement of the notification could be set to be complied with by the assessee in as much as assessee had correctly mentioning Chapter Heading. The Tribunal further held that it was seen that even according to Department instruction so long as the description and sub-heading for the inputs and also the final product was there, the benefit of Modvat credit could be allowed if it was established that the inputs are received and had been used in the manufacture of final product. Tribunal in the case of Bihar Caustic & Chemical Ltd. v. Collector of Central Excise, Patna reported in 1993 (64) E.L.T. 332 (Tribunal) held that Modvat

credit cannot be denied on minor variation in description/classification of inputs.

5. In the present case the appellant has declared the strips of iron falling under Chapter Heading No. 72 of the Tariff as input. It was not the case of the Department that the input in question had not been used in the manufacture of final product. Following the ratio of the decision of the Tribunal in the case of CCE v. Shri Ramakrishna Steel Industries (supra) the impugned order is set aside and the appeal is allowed.

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