

**Collector of Central Excise Vs. Ideal Electronics Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-06-1998

**Reported in :** (1998)(99)ELT521TriDel

**Appellant :** Collector of Central Excise

**Respondent :** ideal Electronics Ltd.

**Judgement :**

1. The Revenue has filed the above application in terms of Section 35G(1) of the Central Excise Act, 1944 seeking reference of the following question of law arising out of Tribunal's Final Order No.A/890/97-NB [1997 (96) E.L.T. 94 (Tribunal)], dated 31-7-1997 to the jurisdictional High Court: "Whether the manufacturer was entitled to make payment of duty out of the consolidated RG 23 Part II if some of the inputs were not common inputs for all the final products as electrical stampings designed for ceiling fans cannot be utilised in room coolers or washing machines and capacitors for ceiling fans cannot be used for all final products such as washing machines, room coolers or cooler fans." 2. The brief facts leading up to the filing of the appeal are that the respondents herein are manufacturers of ceiling fans, room coolers, washing machines and domestic appliances falling under Chapter 84 and 85 of the Schedule to the CETA, 1985 and were availing Modvat credit under Rule 57A of the Central Excise Rules, 1944. They were maintaining a consolidated RG 23 Part II register in respect of all inputs utilised in final products in pursuance of the Board's letter No. F.21/4/87-TRU, dated 20-4-1987 wherein it had been clarified that in order to avail of the relaxation set out therein, the

assessee had submit a statement in a prescribed format along with RT 12 returns showing utilisation of common inputs in their final products, credit or inputs and the amount of duty paid on each final product and if there was any difference, it was required to be debited from PLA. The statement as required was not submitted during the period April 1990 to March 1992 and in March 1991, the assessee submitted statement in respect of only two of the final products viz. room coolers and washing machines. The Department was of the view that the inputs were not common inter alia for the reason that electrical stampings designed for ceiling fans cannot be utilised in room coolers or washing machines and similarly copper wires of different gauges would be utilised for different final products and hence show cause notices were issued proposing recovery of duty for the period April 1990 to April 1992 and the demands were confirmed by the Assistant Commissioner and the Commissioner (Appeals), however, set aside the demands holding that there is no one-to-one co-relation, following the Tribunal's order in the case of Sawottam Ispat P. Ltd. v. CCE reported in 1989 (41) E.L.T.181 and CCE v. Premier Tyres reported in 1992 (43) ECR 499. The Revenue's appeal against this order was dismissed by the Tribunal.

Hence, this application for reference.

3. We have heard Shri Sanjeev Srivastava, learned DR and Shri Lach-man Dev, Learned Consultant.

4. The contention of the Revenue is that as per the provisions of Rule 57F(3)(i) credit taken in respect of inputs can be utilised for payment of duty on final products in which such inputs are intended to be used which means that credit of duty taken on inputs should have been utilised for payment of duty on similar final products and since the final products are different from each other, credit has been wrongly availed. The further contention of the Revenue is that the finding of the lower appellate authority which has been upheld by the Tribunal is not in consonance with the Larger Bench decision of the Tribunal in the case of Kirloskar Oil Engine Ltd. v. CCE, Pune reported in 1994 (73) E.L.T. 835. On the other hand, the submission of the respondents is that undisputedly, the inputs in question viz. copper wires, capacitors, stampings and polyester films, were first used in the

manufacture of electric motor which in turn was used in the manufacture of the declared final products and hence the inputs were common for all the final products in spite of the difference in width of copper wires ratings of capacitors. Their further submission that there is no requirement in law that all the final products should be similar to each other and it is sufficient for the purpose of Rule 57F(3)(i) that the inputs are common for the manufacture of all the final products.

5. We have carefully considered the rival submissions. There is no dispute that all the inputs above mentioned were used in all the final products manufactured by the respondents. Therefore, the inputs have been rightly considered as common for all the final products, in spite of difference in width or ratings of capacitors. We also note that the concept of common inputs arise only when there are different final products and, therefore, see no force in the submission of the learned DR that the final products must be similar final products. The decision of the Larger Bench cited supra has no bearing on the present issue.

The issue before the Larger Bench related to wrong availment of credit of duty paid on inputs used in the manufacture of final product cleared free of duty in terms of exemption Notification already in force at the time of receipt of inputs and the Tribunal held that since Rule 57C of the Central Excise Rules, 1944 clearly forbids availment of input credit in respect of duty free final products, credit taken for duty free portion of the final product was erroneous and, therefore, recoverable in terms of Rule 57-1. The other decision cited by the learned DR viz. the decision in the case of United Canning Company v.CCE, Guntur reported in 1994 (74) E.L.T. 463 is also distinguishable - in that case, Modvat credit of duty paid on metal containers (inputs) was utilised towards payment of duty for mango pulp cleared in pouches and the Tribunal held that such credit was not utilisable as metal container was not utilised in the manufacture of mango pulp cleared in pouches. The Tribunal held that the nexus between the input and the final product must be established before utilisation of Modvat credit, although one-to-one correlation between input and output was not necessary. In the present case, however, we have already noted that the inputs were used in the manufacture of all the final products.

6. In the light of the above discussion, we hold that no question of law arises requiring reference to the jurisdictional High Court and hence we reject the application.

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