

Flex Engineering Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-17-1998

Reported in : (1998)(102)ELT387TriDel

Appellant : Flex Engineering Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Both the appeals involved a common question of law hence they are being taken up together for final disposal.
2. The appellants filed these appeals against two different orders-in-ap-peals passed by the Commissioner (Appeals), Central Excise, Ghaziabad.
3. The appellants are engaged in the manufacture of packing machine of various types and were availing facility of Modvat credit in respect of inputs used in the manufacture of packing machine. The appellants filed a declaration and availed the benefit of Modvat credit in respect of laminated plastic film and paper poly. The benefit of Modvat credit in respect of plastic film and paper poly was denied on the ground that this was not used in or in relation to the manufacture of final product.
4. Learned Chartered Accountant appearing on behalf of the appellants submitted that plastic laminated film and paper poly are used for testing the packing machine which are not entered in the RG 1 stage. He submitted that plastic laminated film and paper poly are used as a part of the manufacturing process in the

manufacture of packing machine. He submitted that it is a settled law that inputs used in or in relation to the manufacture of final product are eligible for the benefit of Modvat credit u/r 57A of the Central Excise Rules, 1944. He relied upon the following decisions: ASCO Industrial Corporation v. C.C.E. 1995 (78) E.L.T. 125 (Tribunal) He submitted that in these cases, the inputs used for testing of the final product are held to be eligible for Modvat credit.

5. He also relied upon the decision of the Hon'ble Supreme Court in the case of C.C.E. v. Eastend Paper Industries Ltd. reported in 1989 (43) E.L.T. 201 (S.C.) in this context.

6. Shri A.M. Tilak, learned JDR appearing on behalf of the Revenue submitted that the Tribunal in the appellants' own case in Appeal Nos.

E/1060/95-NB and E/2399/94-NB [Final Order Nos. A/1151-52/95-NB, dated 24-11-1995 rejected the contention of the appellants and held that plastic film/poly paper (sic) used for the testing of packing machine are not eligible for the benefit of Modvat credit.

7. Heard both sides. In this case, the benefit of Modvat credit in respect of plastic film and poly paper (sic) is denied to the appellants on the ground that these items are used for testing of packing machine. The Tribunal in the appellants' own case vide Final Order Nos. A/1151-52/95-NB, dated 24-11-1995 after considering the decision of the Hon'ble Supreme Court in the case of J.K. Spinning and Weaving Mills v. STO -1965 Sales Tax Cases, Supreme Court 563 and the Tribunal's decision in the case of C.C.E. v. Resch Extrusion Technic (I) Ltd. reported in 1988 (38) E.L.T. 367 held that Modvat credit in respect of plastic film/poly paper (sic) used for testing of the packing machine are not entitled for the benefit of Modvat credit.

Therefore, the issue is covered by the order of the Tribunal in appellants' own case.

8. Learned Chartered Accountant appearing on behalf of the appellants submitted that the appellants filed reference application in the earlier decision of the Tribunal

which was rejected by the Tribunal; thereafter, the appellants filed a Writ Petition in the Hon'ble High Court and the Hon'ble High Court directed the Tribunal to refer the question of law whether the duties paid on materials namely - plastic film and poly paper (sic) used for testing machine are eligible for the benefit of Modvat credit u/r 57A of the Central Excise Rules, 1944. He produced the order dated 1-7-1997 passed by the Hon'ble Allahabad High Court in this respect. The Hon'ble High Court only directed the Tribunal to refer the question of law to the High Court and has not passed any order in respect of stay of operation of the Tribunal's Order-in-Appeal Nos. E/1060/95-NB and E/2399/94-NB [Final Order No.A/1151-52/95-NB, dated 24-11-1995].

9. In view of the above discussions and in view of the above-mentioned decisions of the Tribunal in the appellants' own case, I do not find any infirmity in the impugned order. The appeals are dismissed.

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