Commissioner of Central Excise Vs. Micro Turners

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-20-1998

Reported in : (1998)(103)ELT420TriDel

Appellant : Commissioner of Central Excise

Respondent : Micro Turners

Judgement :

1. Short question in this appeal of the Revenue is whether on the defective motor vehicle parts received by the respondents herein after payment of duty by the consignee and returned to the respondents for removing the defects Modvat credit can be taken or not. Original authority denied the Modvat credit on the ground that this does not amount to process of manufacture and hence no Modvat credit can be taken. On appeal before the lower appellate authority the respondents herein succeeded.

2. Learned JDR, Shri T.A. Arunachalam for the appellant submits that the process undertaken by the respondents does not amount to manufacture and therefore, the benefit of Modvat credit of duty paid, even though by the original consignee of the goods cannot be allowed inasmuch as it is essential for taking the Modvat credit that some manufacturing must take place from inputs to get another commodity.

3. Opposing the contention, learned Advocate, Shri J.P. Kaushik submits that in the present case the Modvat credit is permissible since the process undertaken by

the respondents amounts to process of manufacture. He submits that on receipt of the defective motor vehicle studs, the respondents herein had undertaken the process of rethreading and electroplating of the studs. These process he submits amount to process of manufacture in view of Section Note 6 to Section XVII of the Schedule to the Central Excise Tariff Act, 1985 which for better appreciation is reproduced below :- "6. In respect of goods covered by this Section, conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article (including 'blank', that is, an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part), into complete or finished article shall amount to manufacture." According to this Section Note mere conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article is also a process of manufacture. In the present case it cannot be disputed that the defective studs received by the respondents are in the nature of incomplete or unfinished article although they have the shape of the studs. In order to complete the article and in order to make them usable as motor vehicle parts, the respondents have to undertake process of rethreading and electroplating. I am, therefore, inclined to agree with the submission of the learned Advocate for the respondents that in view of Section Note 6 of Section XVII of the Central Excise Tariff Act, the processes undertaken by the respondents amount to process of manufacture.

Therefore, the Modvat credit has been rightly allowed to them by the lower appellate authority. In view of the foregoing, while admitting the appeal of the Revenue, I dismiss the same.