

Commissioner of Central Excise Vs. Spring Fasteners

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-24-1998

Reported in : (1999)(112)ELT115Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Spring Fasteners

Judgement :

1. The Commissioner of Central Excise, Mumbai - V has filed this appeal against the impugned order captioned above of the Commissioner of Central Excise (Appeals) Mumbai. The Respondents manufacture goods falling under Chapter 73 and 87 of the Central Excise Tariff Act, 1985 and are availing of Modvat credit under Rule 57A of Central Excise Rules. Some of the goods supplied by the Respondents were rejected by their customers being defective and the rejected goods were brought back to the factory and were used in the manufacture of final products which the respondents cleared again on payment of duty. The show cause notice was issued to the respondents on the ground that they have taken credit on their rejected final products which were not their inputs.

The demand for duty on this account of Rs. 55,028.28 was confirmed by the Additional Commissioner of Central Excise who also imposed a penalty of Rs. 1,000/- on the respondents. The Commissioner (Appeals) allowed the appeal against the Additional Commissioner's order holding that the respondents are entitled to take Modvat credit on the materials rejected and returned to them by the customers.

2. Shri K.L. Ramteke, the Id. DR pointed out that unless it is proved that the rejected goods are, infact used in the manufacture of final products in a process amounting to manufacture, credit of duty under Rule 57A will not be available. Here the respondents are receiving the goods for repairs only which will not amount to manufacture. Therefore they are not entitled to Modvat credit on the returned defective goods from their customers.

3. Shri Gautam Doshi, the learned Counsel for the respondents submitted that the Additional Commissioner has denied the Modvat Credit in his order by observing that the question was whether they have included their own defective parts received back from the customers in the list of inputs for Modvat purposes and has observed that no such declaration has been produced before him and therefore they are not eligible for the Modvat credit. On the other hand the respondents have infact submitted a declaration addressed to the Assistant Commissioner declaring the returned defective materials clips, rings and clamps while indicating also that they were received back for repairs and that duty credit will be taken as per the duty paid at the time of first clearance and while clearing the returned goods duty will be debited at the same rate. The learned Counsel also pointed out that even in the grounds of appeal it has been stated that there was a declaration of the returned goods by the respondents. In such a situation, it was urged, that the ratio of the Tribunal judgment in the case of Alcobex Metals Ltd. v. Collector -1993 (68) E.L.T. 146 will be applicable to the case wherein the Tribunal has held defective goods cleared by the customers under Rule 57F(1) (ii) received by the assessee under the cover of gate pass on payment of duty and remelted and used as inputs in the manufacture of final products will be eligible for Modvat credit on the ground that such defective goods are in the nature of inputs and therefore not to be considered as final products. In the same decision it has been held that in such a situation Rule 57A read with Rule 57G will be applicable and not under Rule 173L or Rule 173H of the Central Excise Rules. The learned Counsel also explained that clips and clamps which are returned by their customers because of defects cannot be straightaway repaired. They have to be softened by process and flattened thereafter to be re-made giving them the proper shape for utilisation and any such process would amount to the process of manufacture which answers the ground raised by the department in their appeal.

4. On a careful consideration of the submissions made by both sides, I find lot of force in the submissions made by the learned Counsel which need to be accepted. The record shows that there was a declaration under Rule 57G duly acknowledged by the Assistant Commissioner's office of the material which has been returned to the respondents by their customers who have returned them on payment of duty thereon in terms of Rule 57(1). The process for which the returned goods are submitted is also not a simple process of repairing. Therefore the Commissioner (Appeals) has rightly held that the goods in this case will be eligible for Modvat credit under Rule 57A. The appeal is rejected.

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