

Collector of C. Ex. Vs. Technique Diabrasive I.P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-24-1999

Reported in : (1999)(110)ELT869TriDel

Appellant : Collector of C. Ex.

Respondent : Technique Diabrasive I.P. Ltd.

Judgement :

1. These are six appeals - three filed by M/s. Technique Diabrasives India Pvt. Ltd. and three appeals filed by Revenue - involving the question of classification of a product Plastic Cavity whether it is classifiable under sub-heading 3926.90 of the Schedule to the Central Excise Tariff Act as claimed by the Assessee or under Heading 84.80 of CETA as claimed by the Revenue. The second issue involved is whether the benefit of Notification No. 217/86 is available to the impugned product which is used in the manufacture of abrasive stones. As the issues involved in all the appeals are same, these are being disposed of by one common order.

2. Shri A. Bhattacharya, learned Advocate, submitted that the Assessee manufacture abrasive stone and glazing media; that they manufacture plastic mould known as 'Plastic Cavity' which is used for the manufacture of their final product; that the impugned goods are manufactured out of duty paid plastic sheets; that the plastic cavity is used only once and after a single use they have to be thrown off.

He, further, submitted that since the plastic cavity is made of plastic, it is to be classified as an article of plastic classifiable under sub-heading 3926.90 of CETA; that perusal of Heading 84.80 would reveal that the moulds proposed to be covered by that Heading are meant for, inter alia, mineral materials, plastic etc.; that the word used is for and not of and in order to classify the product under Heading 84.80, it would be required to establish that the moulds are required for the manufacture of mineral materials. He emphasized that what was being manufactured by them is a mould of plastic and not mould for plastic. He also mentioned that the plastic mould, being an intermediate product coming into existence during the course of manufacture of final product, the exemption under Notification No.217/86 is available to them. He relied upon the decision of the Tribunal in the case of *Bhartia Electric Steel Co. Ltd. v. C.C.E., Calcutta-1, -1995 (77) E.L.T. 289 (T)* in which it was held that "All the products which are coming at any stage in between by different manufacturing processes between the inputs brought in by the manufacturers and the final products or bye-products arising in the factory will have to be treated as "intermediate goods" in the context of Rule 57D". In that case, the Appellate Tribunal allowed the Modvat credit of duty paid on inputs used in the manufacture of intermediate goods Mould. He also relied upon the decision of the Larger Bench of the Tribunal in the case of *M/s. Shri Ramakrish-na Steel Industries Ltd. v. C.C.E., Madras - 1996 (82) E.L.T. 575 (T)* in which Modvat credit was held to be admissible in respect of duty paid on chemicals or resin used in preparation of sand moulds in the process of manufacturing final product steel castings. He finally submitted that the charge of denial of Modvat credit of duty paid on raw materials used for the manufacture of plastic cavities was not raised in the show cause notice. He also referred to the Trade Notice No. 29/97 dated 12-4-1997 of Mumbai-1 Commissionerate in which it was clarified that Modvat credit on the inputs used in the manufacture of Moulds would be available in the light of the decision in *Shri Ramakrishna Steel Industries case, supra*.

3. Countering the arguments, Shri Sumit K. Das, learned DR, submitted that Heading 84.80 of the Tariff is a specific heading for moulds for mineral materials; that as per H.S.N. Explanatory Notes, moulds for mineral material includes moulds for agglomerating abrasives into grinding wheels; that the abrasive stones

manufactured by the unit are formed by agglomerating abrasives; that as per Rule 3(a) of the Rules for Interpretation of Tariff, heading which provides the most specific description shall be preferred to heading providing a more general description; that sub-heading 3926.90 is a general entry and as such the impugned product is rightly classifiable under Heading 84.80 only.

He finally submitted that plastic cavity is not an intermediate product in the manufacture of final product, abrasive stone, and as such benefit of Notification No. 217/86 is not available to them and also the Modvat credit is not admissible in respect of the inputs used in the manufacture of plastic cavity.

4. We have considered the submissions of both the sides - Rival Headings of the Central Excise Tariff read as under : "39.26 Other articles of plastics and articles of other materials of Heading Nos. 39.01 to 84.80 Moulding boxes for metal foundry; mould basis; moulding patterns; 5. It is apparent from the wordings of Heading 84.80 that it covers moulds for (i) metal and metal carbides; (ii) glass or mineral materials; and (iii) Rubber or plastics. It is not in dispute that plastic cavity manufactured by the Assessee is used for manufacturing Abrasive Stone which is not mineral materials. The reliance placed by the Revenue on Explanatory Notes of H.S.N. does not help their case as the Assessee is not manufacturing grinding wheels. The learned Advocate has rightly submitted that the basic raw materials used by them are chemicals of various types but their final product cannot be called as a mineral material. The plastic cavity made by the assessee is made of plastic and is not a mould for plastics so as to attract classification under Heading No. 84.80, Heading 39.26 covers articles of plastics and articles of other materials of Heading Nos. 39.01 to 39.14. It is not in dispute that the impugned product is an article made of plastics and as such it is rightly classifiable under sub-heading 3926.90 of the Tariff.

6. The second issue involved is regarding availability of Notification No. 217/86 in respect of plastic cavity. The Collector (Appeals) has denied the benefit of notification as the impugned product is not an intermediate product for the purpose of manufacture of the final product, namely, abrasive stone. Notification No. 217/86, dated 2-4-1986 provided exemption from payment of duty if the product

manufactured in a factory is used within the same factory in or in relation to the manufacture of final product. The impugned product 'Plastic Cavity' is used by the appellants in the manufacture of their final product 'Abrasive Stones' and apparently it cannot be said that the impugned product is not used in or in relation to the manufacture of the final product. The Appellate Tribunal's Larger Bench in the case of Shri Ramakrishna Steel Industries Ltd. v. C.C.E., supra has dealt with the issue of availability of Modvat credit of duty paid on inputs used in the manufacture of moulds which in turn were used in the manufacture of castings. The Appellate Tribunal held as under :- "We are here dealing with a case where inputs are not necessarily required to be used in the manufacture of final product, but are used "in relation to the manufacture" of the final product, which is an expression of considerably larger import. The words "in relation to the manufacture" are intended to set at rest all doubts. Where raw material is actually used in the main stream of manufacture of final product, that is, actually used in the physical or chemical process of manufacture, it is certainly an input used in the manufacture of final product. The doubt may arise only in regard to use of some article not in the main stream of the manufacturing process but in another stream of manufacturing something which is to be used for rendering final product marketable or used otherwise in assisting the process of manufacture. Such doubts is set at rest by use of the words "used in relation to the manufacture". It is true that sand mould is not a raw material actually used in the manufacturing process of final product in the sense that when mixed with some other articles it would produce the final product. Sand mould is also not used in the preparation of some other articles which is necessary to render the final product marketable. It is an article which has a significant role to play in the manufacture of final product without being used in the main stream of the manufacturing process but without the use of which the final product will never come into being. When such is the case, it is reasonable to conclude that sand mould is used in relation to the manufacture of final product, namely steel castings. It is logical to hold that chemicals or resin which are used "in relation to manufacture of final product", namely steel castings. The contrary view taken in Mukund Iron & Steel Works Ltd. v. Collector of Central Excise -1990 (48) E.L.T. 552 (T) and Shivaji Works Ltd. v. Collector of C. Excise - 1990 (50) E.L.T. 50 (T) is not correct." 7. Similar was the

view of the Appellate Tribunal in the case of *Bhartia Electric Steel Co. Ltd. v. C.C.E.*, supra in which all the products coming into existence at any stage in between the production of final product were held to be intermediate products for the purpose of Rule 57D of the Central Excise Rules. Further, the decision of the Larger Bench has been followed by the Appellate Tribunal in many cases, for example in the case of *C.C.E., Chandigarh v. Leader Engineering Works -1997* (92) E.L.T. 557 (T). Moreover the Department also directed the staff to allow the Modvat credit on the inputs used in the manufacture of mould in the light of decision in *Shri Ramakrishna Steel Industries* case. Accordingly the impugned orders denying the benefit of Notification No. 217/86 are set aside to that extent and all the three appeals filed by the Assessee are allowed. Further all the three appeals filed by Revenue are rejected. The cross objections filed by *M/s. Technique Diabrasives India Pvt. Ltd.* are also disposed of in the above terms.

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