

Threads (India) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-03-1999

Reported in : (1999)(113)ELT338TriDel

Appellant : Threads (India) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

(a) Credit of Rs. 755/- has been reversed back by the party. The same is confirmed as recoverable under Rule 57-T. (b) Credit of Rs. 5700/-, Rs. 1140/- and Rs. 36/- have been correctly availed by the party. Therefore, the same is not demandable.

(c) An amount of Rs. 6318.00 is confirmed and demandable under Rule 57G. (d) Out of the total credit of Rs. 1430/- party has irregularly availed credit of Rs. 159/- and Rs. 417/- totalling Rs. 636/-. Thus I confirm the demand of Rs. 636/- against the party.

I also impose a penalty of Rs. 1500/- on M/s. Threads India Ltd., Kampur Dehat under Rule 173Q of CER, 1944".

"I have examined the case carefully, I find that the adjudicating authority has disallowed the credit on the ground that the appellants had not filed declaration of the impugned goods. In this regard the appellants have stated that there is no error in making the declaration of Electric Motor falling under Chapter Heading

85.01 rather than Chapter Heading 84.48 as declared by the manufacturer/supplier and in such a situation credit is not deniable. I find from the impugned invoice issued by the manufacturer/supplier that the manufacturer had classified their goods under Chapter Heading 84.48 and described as "parts of circular weaving machine i.e. motor falling under chapter sub-heading 4848.96". Therefore, it is clear that the appellants had taken credit on such goods which was not declared by them and in these circumstances, the adjudicating authority has rightly denied the credit. The appellants have availed such credit which was not due to them therefore imposition of penalty is justified.

In view of the above discussions, the Order-in-Original No. 96/Dem/ACK-1/98, dated 28-4-1998 passed by the Asstt. Commissioner, Central Excise Div. I, Kanpur is upheld as legal and proper and the appeal is rejected." Being aggrieved by the above order which is the impugned order in this case, the appellants have filed the captioned appeal.

3. The facts of the case briefly stated are that the appellants are engaged in the manufacture of sewing threads. They availed Modvat credit on certain inputs. The Department alleged that the appellants had not filed declaration under Rule 57T of the Central Excise Rules.

The items in dispute were electric motor, flange, distance piece. The appellants submitted that they had described in their declaration of the goods as electric motors classifiable under Chapter heading 85.01; that electric motors classifiable under Chapter Heading 85.01 are capital goods; that electric motors are correctly classifiable under Chapter Heading 85.01 and not under Chapter Heading 8448.90; that they have purchased these electric motors from M/s. Lohia Starlinger Ltd.; that they were not answerable if the manufacturer of the inputs had classified them under Chapter Heading 84.48; that misdeclaration by the manufacturer cannot be the basis for denying Modvat credit; that the appellants had made declaration and filed the same; that receipt of the electric motors from the suppliers is not disputed; that distance piece was described as spacer; that since there was no error in so far as description of the goods is concerned, therefore, the question of imposition of penalty did not arise. The appellants,

therefore, prayed that the appeal may be allowed.

4. None appeared for the appellants. Shri Y.R. Kilania, Id. DR appears for the respondent Commissioner and reiterates the findings of the authorities below.

5. I have heard Shri Y.R. Kilania. I have also perused the written submissions filed by the appellants. I have perused the case law cited by the appellants and the relevant rules which are contested. I find from the records placed before us that in the invoice dated 27-4-1996 issued by M/s. Lohia Starlinger Ltd., the goods have been described as "Motor". In the invoice dated 13-6-1996, the goods have been described as induction motor. I have also perused the evidence placed before us in the form of declaration. In the declaration, the goods have been declared as electric motors. I have perused Rule 57-T which requires that every manufacturer intending to take credit of the duty paid on the capital goods under Rule 57Q shall, before receipt of the capital goods filed a declaration with Asstt. Commissioner of Central Excise having jurisdiction over its factory.... This requirement of this rule is that a declaration describing the goods to be filed. There is no dispute that the goods in dispute are electric motors. On perusal of the relevant invoices, I find that the goods are described as electric motors. Thus, I hold that there is no mistake in declaration. If the Chapter Heading given by the supplier of the inputs is different from the Chapter Heading given by the appellants, I find that the declaration was required to be filed before the receipt of the goods.

Electric motors fall under Chapter Heading 85.01 and therefore, the declaration at the time of its submission was correct as the appellants had only purchased electric motors. Regarding denial of Modvat on Distance piece described by the appellants as a Spacer I give the appellants the benefit of doubt in view of the fact that Distance piece can be called as a Spacer. Similarly, a component declared as support.

The Department has not placed anything on record to show that the item could not be declared as support and therefore, Modvat credit will not be admissible on this part.

6. Having regard to the above finding, the impugned order is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

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