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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-05-2000

Reported in : (2000)(92)LC57Tri(Delhi)

Judge : S T G.R., a Unni

Appellant : Monica Electronics

Respondent : Cce

Judgement :

1. Commissioner of Central Excise, New Delhi by Order-in-Original dated 10.2.1999 disallowed modvat credit to the appellants to the tune of Rs. 23,55,581/- under Rule 57U(3) of the Central Excise Rules in respect of moulds supplied by the appellants to M/s. Showpla India Ltd. for manufacture of TV cabinets and their supply to the appellants who are manufacturers of coloured TV sets. Penalty of an equal amount was also imposed upon them apart from confiscating the moulds with redemption fine of Rs. two lakhs.

2. The appellants' contention was that the moulds having been supplied to M/s. Showpla India Ltd. with the prior permission of the Department in accordance with the provisions of Rule 57S(8), the credit taken in respect of moulds had been debited in the PLA. They had also sought to interpret the word "job worker" in Rule 57S(8) to mean any person using the moulds for production of goods in accordance with the specifications given by the supplier of the moulds and nothing more.

The Commissioner on the other hand had taken the view that as regards the meaning of the term job worker', there was no distinction between the definition of 'job worker' given in Notification No. 214/86 and Notification No. 83/94. In these notifications 'job worker' has been described to mean the person who receives the principal raw materials from the manufacturer and thereafter undertakes a process of manufacture with his own labour and tools. Commissioner had observed that since M/s. Showpla India Ltd. had removed four out of eight moulds supplied to them by the appellants without their consent and even without informing them, it showed that the relationship between the appellants and M/s. Showpla India Ltd. was not that of an agent vis-a-vis the principal. Nothing in the manner of their dealings also suggested that the relationship between the appellant and M/s. Showpla India Ltd. was not on principal to principal basis. Commissioner also rejected the present appellants' contention that there was no revenue implication in view of the credit available to M/s. Showpla India Ltd. in the event of removal of the moulds by the appellants in terms of Rule 57S(1)(ii). In such a situation/the credit taken by M/s. Showpla India Ltd. would have been used for paying the duty on TV cabinets only. According to the Commissioner, by using the credit for payment of duty on coloured TVs, which was far more than the duty on the cabinet, the appellant had in fact mis-appropriated the credit and in the process, the appellants had deferred the payments, to PLA. For these reasons the impugned order held that, M/s. Showpla India Ltd. was not a job worker of the appellants. Commissioner also found that there was mis-statement on the part of the appellants with intention to evade duty justifying the imposition of penalty.

3. Arguing the case of the appellants, Shri G. Shiv Dass, ld. advocate submitted that modvat credit had been denied to appellants only on the ground that M/s. Showpla India Ltd. cannot be treated as 'job worker' as no raw material was supplied by the appellants to M/s. Showpla India Ltd. and that the transactions between the appellants and M/s. Showpla India for the sale and purchase of TV cabinets was on a principal to principal basis. It is argued by the ld. Counsel that the expression 'job worker' in Rule 57S(8) cannot be interpreted on the basis of the meaning given to 'job worker' in exemption Notifications 214/86 or other Notifications referred to above. These Notifications relate to the exemption given to 'job worker' in relation to the final products manufactured by the principal

manufacturer who had supplied the raw material to the 'job worker' for working on it with his own labour and tools. Counsel submitted that Sub-rules (8) to (10) of Rule 57S dealing with the supply by the manufacturer of moulds to a 'job worker' was a complete code in itself inasmuch as it governed the supply of moulds and dyes to persons for manufacture or production of goods on behalf of the principal according to the principal's specifications. The procedure for obtaining permission from the Commissioner for sending the moulds/dyes and for returning them within the period of three months specifically relates to the supply of moulds or dyes which were capital goods whereas in the case of Exemption Notification as Notification No. 214/86, the object was to exempt such 'job workers' from duty liability who would otherwise have been liable for duty payment for manufacture of the goods as manufacturer. Sub-rules (8) to (10) of Rule 57S on the other hand, was meant only to ensure that the moulds and dyes which were capital goods, supplied by the principal to a person for purposes of production of goods on behalf of the principal and for receiving back the goods from such persons within the time limit given therein or within such extended period the Commissioner permits. The use of the word 'job worker' has therefore to be seen in the context of the scheme of Sub-rules (8) to (10) and not on the basis of definition of 'job worker' in other exemption Notifications whose objects were entirely different. There was therefore no warrant for importing the definition of 'job worker' in exemption Notification 214/86 or other similar Notifications which deal with entirely different situations. Further, if the meaning of 'job worker' in those Notifications were applied to Rule 57S(8), the scheme of Rule 57S(8) to (10) would get completely distorted since the person referred to as 'job worker' in Rule 57S(8) to (10) would get completely distorted since the person referred to as 'job worker' in Rule 57S(8) was not the person entrusted with any raw materials or inputs but a person who has been given moulds and dyes which were capital goods and which are to be returned to the principal manufacturer after it has been used of for carrying out the specific job. The capital goods did not undergo any change unlike in the case of raw material which gets consumed in the manufacture of final products. It was also submitted that at the time of proceedings before the Commissioner it had been explained that even if the contentions of the Department were upheld, the entire exercise at the end was Revenue neutral.

3.1. Ld. SDR Shri Mewa Singh, reiterated the findings of the Commissioner and made specific reference to the observations made in the impugned order relating to M/s. Showpla India Ltd. removing four out of eight moulds supplied by the appellants to another party without taking the appellants' consent which showed that the appellants and M/s. Showpla India Ltd. were dealing with each other on principal to principal basis.

4. We have considered the submissions and perused the records. On a perusal of the scheme of Rule 57S and the Sub-rules (8),

(9) and

(10) in particular, it appears that the said three Sub-rules deal with removal of moulds and dyes by a manufacturer to a job worker for the purpose of production of goods on his behalf and according to the specifications given by the manufacturer. Sub-rule

(8) opens with a non obstante provision in relation to Sub-rule

(1) thereof. Rule 57S itself deals with the manner of utilisation of capital goods and the credit allowed in respect of duty paid thereon. Sub-rule

(9) puts a time limit of three months for bringing back the said moulds and dyes and the goods manufactured using the said moulds/dyes unless the period is extended by the Commissioner. Sub-rule

(10) provides that if the moulds/dyes removed under Sub-rule

(8) are not received back within the time allowed, duty shall be paid equivalent to the credit taken on the said moulds/dyes. On a close reading of the said three Sub-rules, it does not appear that the rule making authority had any intention to give the expression 'job worker' used in Sub-rule (8), the meaning given to it in the exemption Notifications like Notification No.214/86. In the said notifications the 'job worker' is supplied with raw material by the manufacturer and the job worker clears the manufactured goods from his factory after utilising the raw materials supplied by the manufacturer. The intention is to exempt the 'job worker' of duty liability as a

manufacturer. In the facts of the present case, the moulds which are capital goods, they are not materials which get consumed in the process of manufacture by the job worker. The scheme of Rule 57S and Sub-rules

(8) to

(10) thereof does not therefore appear to be compatible with the definition of 'job worker' in the said Notifications. We therefore, find that there is force in the contention of the ld. counsel that any interpretation of 'job worker' in Sub-rules

(8) to

(10) of Rule 57S as having the same meaning it has in the Exemption Notifications will distort the said provisions and make it unworkable. We also find that the decisions relied on by the Commissioner do not deal with the question of applicability of definition of 'job worker' in other Notifications to provisions of Rule 57S(8).

5. In the above view of the matter we are unable to agree with the reasoning given by the Commissioner in the impugned order for holding that M/s. Showpla India Ltd. is not a 'job worker' for purpose of Rule 57S(8) in the facts of the case.

6. For the same reason we also do not find any merit in the finding that there was mis-statement on the part of the appellants by describing M/s. Showpla India Ltd. as job worker while seeking permission from the Commissioner under Rule 57S(8).

7. As a result, denial of modvat credit to the present appellant cannot sustain and therefore the impugned order is set aside with consequential benefits to the appellants.

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