

Cce Vs. Rolax Applied Components

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-06-2000

Reported in : (2001)(95)LC227Tri(Delhi)

Judge : J Balasundaram, S T S.S.

Appellant : Cce

Respondent : Rolax Applied Components

Judgement :

1. The respondents herein are engaged in the manufacture of auto parts and auto-accessories and availing modvat facility of duty paid on inputs. During the course of investigations in 1987 that they were taking credit of duty paid on certain inputs without bringing the inputs into their factory and without utilising them in the manufacture of their finished products. It was admitted by the assesseees that while the inputs were required for electro-plating of their products, they did not have electroplating facility in their premises and thus they were getting this process done on job work basis. Due to violation of the provisions of the Modvat Rules by taking credit without obtaining permission for the job work in terms of Rule 57F(2) of the Central Excise Rules, a show cause notice was issued on 30.6.1989 proposing recovery of inadmissible credit of Rs. 8,64,983.58 taken during the period 1.4.1986 to 4.8.1987. The notice also proposed imposition of penalty under Rule 57-1 of the Central Excise Rules. Vide order-in-original dated 13.11.1990, the Commissioner of Central Excise confirmed the duty demand and imposed a penalty of Rs. 1 lakh. The assessee filed an appeal to the Tribunal which vide

Final Order No.A/899/94-NB Dated 28.10.1994, set aside the adjudication order and remanded the case for re-examination of the issue whether with reference to the records, it could be verified that the inputs which were sent out were received back after reprocessing and ultimately utilised in the final products and to consider extending modvat credit notwithstanding the respondents' failure to apply for and obtain the necessary permission. In de-novo proceedings, the Commissioner held that there was no evidence to prove that the inputs in question were received back by the respondents after re-processing and used in the manufacture of final products. He, therefore, once again disallowed the modvat credit, but did not impose any penalty. The Revenue is aggrieved by the non-imposition of penalty upon the respondents.

2. It is the contention of the learned DR that penalty is attracted for admitted violation of modvat Rules and, therefore, the Commissioner has erred in not recording any finding on the aspect of penal action.

3. We have perused the records including the Tribunal's remand order.

We find that the remand order of the Tribunal does not mention anything about penalty. The Tribunal has not given liberty to the Commissioner to examine the aspect of imposition of penalty, while readjudicating the matter. The Commissioner has therefore, rightly considered only the question of wrong availment of modvat credit. He has correctly confined himself to the remand directions. In the absence of any direction regarding re-examination of the liability to penal action of the respondents, we find no infirmity in the impugned order and accordingly uphold the same and reject the appeal of the Revenue.

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