

Cce Vs. Sail

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-27-2001

Reported in : (2000)LC129Tri(Chennai)

Judge : S Peeran, R K Jeet

Appellant : Cce

Respondent : Sail

Judgement :

1. The matter has been listed for passing final order in terms of Section 35K read with 35C of the Central Excise Act.

2. The Collector of Central Excise, Coimbatore was aggrieved with the Order-in-Appeal No. 249/87 (CBE) dated 26.10.87 against the respondent PSU unit namely M/s. Steel Authority of India Ltd. (SAIL) and had filed an appeal E/42/88 (MAS) challenging the grant of Modvat in respect of Inter Leaving Kraft paper used in the manufacture of stainless steel sheets under Rule 57A of the Central Excise Rules. The Tribunal after due consideration of the submissions made by both the sides allowed the appeal of the Revenue by holding in para 4 of the Final Order No.153/89 dated 30.3.89 as follows: We have carefully considered the submissions made by the learned SDR and the papers filed by the respondents. The question is whether the inter leaving kraft paper can be considered as an input for purpose of MODVAT credit in terms of Rule 57-A of the Central Excise Rules 1944. It is stated that the inter leaving kraft paper is used during the coiling

and uncoiling process of the stainless steel sheets as a protection against scratches. It is also seen that these papers are used and reused. Therefore, judging from the function of the material, they are more in the nature of equipment or appliance used in the manufacture of the finished product i.e. stainless steel sheets, to prevent scratches or absorption of oil in the coiling process, and, as such, in terms of the explanation to Rule 57A of the Central Excise Rules 1944, such materials are excluded from the purview of the term 'input', and in such a view of the matter, the material cannot be considered as an input used in or in relation to the manufacture of the finished product. In the circumstances, therefore, there is a lot of force in the contention put forth in the appeal by the Collector and accordingly, the impugned order is set aside and the appeal is allowed.

3. Aggrieved by the said order, the PSU unit SAIL had filed a Reference application to refer the matter to the High Court of Madras to answer the questions raised by them. The matter was taken up by the High Court and directed the Tribunal to prepare the statement of facts and remit the case to High Court to answer the questions. The Hon'ble High Court took the following questions: (i) whether in the facts and circumstances of the case inter leaving kraft paper used in the process of cold rolling and manufacture of stainless steel strips can be considered to be input used in or in relation to manufacture of the stainless steel strips for the purpose of Rule 57A of the Central Excise Rules 1944? & (ii) whether the Customs, Excise and Gold (Control) Appellate Tribunal had any material to take the view that inter leaving kraft paper used in different stages of manufacture of stainless steel strips/sheets to avoid rubbing scratches to the material during rolling operation of the in process goods can be considered to be in the nature of equipment or appliance in the absence of any plea even beyond of actual proof to that effect by the respondents at any stage of the proceedings Arising of Appeal No. E/42/88(MAS) 249/87(CBE) dated 26.10.87 on the file of the Customs, Excise and Gold (Control) Appellate Tribunal South Regional Bench at Madras? for consideration in Reference Case No. 7/99 and decided the Reference on 27.11.2000 by holding as follows: This reference coming on for hearing on this day upon perusin the order of Reference of the Customs Excise and add (control) Appellate Tribunal South Regional Bench at Madras dated 30.7.99. The statement of the case submitted by the CEG(C) Appellate Tribunal in pursuance of the order

of the High Court and upon hearing the arguments of Mr.

Krishna Srinivas for M/s. Ramasubramaniam, Associates Advocates for the appellant, and of Mr. K. Veeraraghavan, Additional Central Government Standing counsel on behalf of the respondent, the Court delivered the following Judgment:-- Stainless steel strips and coils manufactured by the petitioner involve the use of kraft papers which are used for inter leaving the strips in order to prevent the strips getting into direct contact as that would result in friction which would in turn result in defects and also would be potential points for corrosion. The interleaving paper also serves as an oil absorbant thus improving the surface and brightness of the steel coils and sheets. Unless such kraft paper is used for interleaving, the final products cannot be defect free. The assessee therefore claimed that the interleaving paper is an input and the duty paid on the purchase of that interleaving kraft paper is to be considered under Rule 57A of the Central Excise Rules.

2. Rule 57A as it then stood in the explanation under the proviso set out an inclusive definition of inputs with an explanation which reads as under: (a) inputs which are manufactured and used within the factory of production in or, in relation to, the manufacture of final products, and (i) Machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing or any goods or bringing about any change in any substance or in relation to the manufacture of the final products.

(ii) Packaging materials in respect of which any exemption to the extent of the duty of excise payable on the value of the packaging materials is being availed of for packaging any final products.

(iii) Packaging materials, the costs of which is not included or had not been included during the proceeding financial year in the assessable value of the final products under Section 4 of the Act.

The kraft paper is clearly an item which is used within the factory of production in relation to the manufacture of the final product, namely, stainless steel coils and stainless steel sheets and would thus be an input for the purpose of Rule 57A.

Such usage of kraft paper in the factory of production in relation to the manufacture of final product is not excluded from the category of inputs by reason of anything contained in clauses 1 to 5 in the explanation.

The Tribunal had gone to the extent of holding that the kraft paper is in the nature of equipment or appliance used in the manufacture of stainless steel sheets, we find it difficult to appreciate or approve such a view. The paper used here is neither an apparatus nor a tool. It is certainly not an appliance, equipment, plant, machinery or machine.

The category of machines, and similar equipments referred to in Sub-clause (i) in Clause (1) of the explanation are things which are not themselves consumed in the process of manufacture.

It is not the case of the Revenue that the manufacturer had availed any exemption for the duty of exercise (excise) payable on the value of the paper by regarding the same as packaging material. The finding recorded by the Collector of Central Excise is that this paper is used in the process of manufacture. In the course of his order, the Collector has stated that every coiling operation in this process flows through various processing units with interleaving paper and that the interleaving paper is taken out in the next processing during uncoiling and further that the coils under generally six to seven uncoiling and recoiling operations depending on the grade and gauge of stainless steel products and the process cycle it has undergone. Every process involves one coiling and one recoiling.

3. It is, therefore, evident that the kraft paper which the assessee had purchased by paying duty has been used by it in relation to the manufacture of the final product and that it has been used in the process of manufacture at every stage of coiling and recoiling and that it is not an item which is excluded from the category of inputs under the explanation below the proviso to Rule 57A.4. Our attention was drawn by the counsel to the decision of the Supreme Court in the case of Collector, Central Excise v. Eastend Paper Industries Ltd. questions as to whether the kraft papers can be regarded as raw material and component part of wrapped paper entitled to exemption under Notification No. 18A/93--C.E. The court after holding that in order to claim the benefit of the notification the assessee had to

establish that the wrapping papers were consumed or utilised as component parts or raw material for the final products held that anything required to make the goods marketable must form part of the manufacture and any raw material or materials used for the same would be component for the end product.

5. In this case, the kraft paper is used in relation to the manufacture within the factory of the assessee and is essential for the purpose of maintaining the quality of the product. The question referred to us as to whether the kraft paper can be regarded as not used as input in relation to stainless steel products for the purpose of Rule 57A is answered in favour of the assessee and against the revenue. The other question as to whether it can be regarded as an equipment or appliance is answered in the negative.

6. The High Court has sent back the file now directing the Tribunal to pass the final order in terms of Section 35K read with 35C of the Act.

In terms of the above answer given by the Hon'ble High Court to the question raised, the Tribunal is passing this final order holding that the input Interleaving Kraft paper used in the process of cold rolling and manufacture of stainless strips can be considered to be used in terms of provisions of Rule 57A of Central Excise Rules and the assessee is entitled to the benefit with consequential relief thereof.

While, the second question referred to the High Court has been answered in the negative, hence no order is required to be given on this aspect of the matter. Thus the Final Order is passed in the above terms.

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