

Anusika Autolite Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-29-2002

Reported in : (2002)(80)ECC328

Judge : B T K.K.

Appellant : Anusika Autolite Ltd.

Respondent : C.C.E.

Judgement :

1. The appellant manufacture Automobile Head Lamps and its Accessories falling under Chapter sub-heading 8512.00. They are also availing modvat credit facility under Rules 57A & 57Q of Central Excise Rules, 1944. They had purchased one Glass Plunger (Die) and availed modvat credit amounting to Rs. 2,31,000 on their RG 23C Pt. II entry NO. 4/2 dt. 10.10.97. This Glass Plunger Die was sent to their branch office at Firozabad for getting the Glass Lenses manufactured from the other units as job workers. They were issued a show cause notice dated 4.5.98 by the Dy. Commissioner of Central Excise, Jaipur in which it was alleged that the noticee had no facility to manufacture glass and glass lenses in their factory premises and the said Glass Plunger Die was not usable in their factory premises. It is alleged that they made a written declaration in their letter dated 20.7.97 that the said Plunger Die had been put into use in the production of excisable goods whereas the assessee did not have any facility to manufacture the Glass Lenses.

It was therefore alleged that they had contravened the provisions of Rules 52A and 57S(8) read with Rule 57Q of Central Excise Rules, 1944, as the capital goods in respect of each credit of specified duty allowed under Rule 57Q were not used in the factory of the manufacturer of final products and removed as such without payment of appropriate Central Excise duty and without intimation to the Asst. Commissioner.

Therefore, they were called upon to show cause why the Central Excise duty amounting to Rs. 2,31,000 availed as modvat credit on capital goods should not be recovered from them under Rule 57U(3) and why a penalty should not be imposed on them under Rule 57U(6) and Rule 173Q.2. On considering the reply of the party, the Dy. Commissioner of Central Excise, Jaipur vide his order dated 4.12.98 confirmed the duty of Rs. 2,31,000 on the party apart from imposing a penalty of equivalent amount under Rule 57U(6) and a penalty of Rs. 30,000 under Rule 173Q.3. The party filed an appeal but the same is rejected vide Order dated 9.7.99 of Commissioner (Appeals), Jaipur.

4. This appeal is against the impugned order of Commissioner (Appeals).

I have heard Shri K.K. Anand, Advocate for the appellants and Shri H.C.Verma, JDR for the respondents. It is observed from the order of the original authority that the party argued before him that their goods are covered under Rule 57S(8). The adjudication authority has observed that mould dies were cleared on the same day of the applying for permission without waiting for the required permission. The Dy.

Commissioner in his order has further observed that in the instant case no raw material has been supplied by the assessee (customer) rather they have purchased Glass Lenses from the manufacturers and has also taken modvat credit on such Glass Lenses. Therefore, it is not a category of job worker and job worker in the case of the assessee. Thus the present situation of the assessee is not covered under the provisions of Rule 57S(8). The Dy. Commissioner in his order has relied on the judgment of the Supreme Court in the case of M/s. Prestige Engineering (India) Ltd. v. CCE , in which the Hon'ble Apex Court have held that job work means goods produced by a unit out of raw material supplied by the customer and where the job worker contribute mainly labour and skills. The job worker is

charging the job work charges for their task performed. It is held that since in this case, the appellants have not supplied any raw material to the job worker, therefore, the present case is not covered the provisions of Rule 57S(8). These provisions are extracted below: (8) Notwithstanding any thing contained in Sub-rule (1), a manufacturer may, with the permission of the Commissioner and subject to such terms and condition and limitation as he may impose, remove the moulds and dies, without payment of duty, to a job worker for the purpose of production of goods on his behalf and according to his specification.

5. The only ground on which the modvat credit on the Plunger Die has been denied to the appellants is that the appellants are not sending any raw material to the outside party and therefore such party cannot be considered as their job worker as specified in the afore-mentioned rule. The Ld. Counsel for the appellants contends that this matter had earlier came up for consideration before the Tribunal in the case of M/s. Monica Electronics v. C.C.E., New Delhi and the Tribunal vide Final Order No. A/315/2000/NB/DB dated 5.4.2000 had allowed the appeal of the party by holding that under the scheme of Rule 57-S, the expression "job worker" cannot be interpreted in the same manner as provided in the case relating to Rule 57-F and Notfn. No 214/ 86. These findings of the Tribunal in the above order are extracted below: 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 dies 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-obstinate 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 dies and the goods manufactured using the said moulds/dies unless the period is extended by the Commissioner.

Sub-rule provides that if the moulds/dies 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/dies. 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 notification like Notfn. 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 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 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).

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 of 57-S(8) in the facts of the case.

6. The facts of the present case are squarely covered by the ratio of the above decision of the Tribunal. The meaning assigned to the expression "job work" by the Hon'ble Supreme Court in their judgment in M/s. Prestige Engineering (India) Ltd. (Supra) cannot be made applicable to the facts of the present case since the said judgment does not deal with the subject of capital goods sent to another party for job work as is the case in the present appeal. I therefore, allow the appeal by setting aside the impugned order of Commissioner (Appeals).