

Rochi Ram and Sons Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-12-2003

Reported in : (2003)(155)ELT96TriDel

Judge : S Kang, a T V.K.

Appellant : Rochi Ram and Sons

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in these 3 appeals arising out of a common order is whether Modvat credit of the duty paid on the inputs is available to M/s. Rochi Ram & Sons.

2. Shri C. Harishanker, learned Advpcate, submitted that the appellant-firm manufacture wrist watches/wrist watch cases and avail of Modvat credit of the duty paid on the inputs; that wrist watches of M.R.P. below Rs. 500/- per piece were made wholly exempt from payment of duty under Notification No. 6/2000-C.E., dated 1-3-2000; that the inputs are same whether the watches are of M.R.P. value less than Rs. 500/- or more than Rs. 500/-; that as the appellants were clearing wrist watches bearing M.R.P. less than Rs. 500/- per piece without payment of duty they were reversing, at the time of clearance, Cenvat credit of the duty paid on the inputs which had gone into the manufacture of exempted watches; that the Commissioner, Central Excise, under the impugned Order, has demanded Cenvat credit availed of on inputs used in the manufacture of exempted goods and

imposed penalty on all the three appellants on the ground that the appellants had manufactured only exempted goods during the period from 1-4-2000 to 31-8-2000 and the provisions of Rule 57AD(1) are applicable. The learned Advocate, further, submitted that as a number of inputs went into the manufacture of wrist watches, establishment of one to one co-relation of the inputs that went into the manufacture of exempted and dutiable wrist watches is very difficult; that as the inputs shared a common usage, maintenance of separate records for different type of wrist watches was not feasible; that as the records of both types of wrist watches were maintained on a consolidated basis, 8% of the value of the exempted watches was paid by them, at the time of clearance thereof; that the appellants had always intended to manufacture both the types of wrist watches i.e. dutiable and exempted, and in fact, during the financial year 2000-2001 both the types of watches were manufactured by them; that the mere fact that during the period from 1-4-2000 to 30-8-2000 only watches with M.R.P. less than Rs. 500/- were manufactured could not detract from this fact; that this was because of the fact that this period was off season period; that in view of the fact that they did manufacture both the dutiable and exempted wrist watches and also cleared the exempted watches by paying amount equal to 8% of the value as required under Rule 57AD they have not contravened any provision of Central Excise Rules.

3. Learned Advocate also submitted that the demand relates to two types of inputs namely, (1) inputs which were lying in stock on 1-4-2000 and (2) inputs which arrived between 1-4-2000 and 31-8-2000; that the inputs lying in stock on 1-4-2000 were those inputs in respect of which credit had been taken in RG 23A, Part 1, before 1-4-2000; that the total credit so taken was Rs. 37,49,600/- out of which Rs. 29,21,111/- had already been availed of prior to 1-4-2000; that the credit which had already been availed of cannot be recovered at any rate; that the fact that the inputs to which such credit related were still in stock on 1-4-2000 makes no difference as no one to one co-relation is required for the purpose of credit; that, further, remaining Modvat credit which was taken in Part 1 when the final product was dutiable but still remain unutilized on 1-4-2000 after which the final product was exempted can also not be covered in view of the judgment of the Kerala High Court in CCE v. Premier Tyre Ltd., 2001 (130) E.L.T. 417 (Kerala) which has been followed by the Larger Bench of the Tribunal in the case of CCE v. Ashok Iron &

Steel Fabricators, 2002 (140) E.L.T.277; that the Larger Bench following the decision of the Supreme Court in the case of CCE, Pune v. Dai Ichi Karkaria Ltd., 1999 (112) E.L.T.353 has held that the benefit of the credit which has been validly taken is available to the manufacturer without any limitation in time or otherwise. In respect of inputs received after 1-4-2000 the learned Advocate mentioned that the credit so taken was Rs. 24,22,841/- out of which Rs. 5,49,403/- had been reversed as the inputs as such were cleared by them; that the remaining amount has been demanded under the impugned order; that out of this amount they have debited Rs. 17,565,758/- between April, and August, 2000 as acknowledged in the RT-12 filed by them; that there is no justification of imposition of penalty on all the 3 appellants.

4. Countering the arguments Shri Rajeev Tandon, learned SDR, submitted that during the relevant period the appellants were found engaged in the manufacture of wrist watches of M.R.P. up to Rs. 500/- only; that they were not manufacturing during the material period any wrist watch which was not exempted from payment of duty; that Rule 57AD(1) clearly provides that Cenvat Credit shall not be allowed on such quantity of inputs which are used in the manufacture of exempted goods; that as they were not manufacturing at the material time both the dutiable and exempted wrist watch provisions of Rule 57AD(1) were applicable and the provisions of Rule 57AD(2) were not applicable and accordingly they cannot have cleared the watches on payment of an amount equivalent to 8% of the value of exempted goods; that this facility of payment of an amount equivalent to 8% of the value of the exempted goods is available only when the manufacturer is manufacturing and clearing both the exempted goods and the dutiable goods and they have not maintained separate records for the inputs; that this facility cannot be extended to those manufacturers who are only manufacturing exempted goods during a particular period; that for the application of provisions of Rule 57AD(2) it is necessary that the manufacturer manufactures simultaneously both the exempted and dutiable final products. The learned SDR, further, submitted that the Larger Bench decision in the case of Ashok Iron & Steel Fabricators and the judgment in the case of Premier Tyres are not applicable as these decisions were passed on the ground that there was no provision for reversal of credit; that the Cenvat credit provision at the relevant time have a specific provision in Rule 57AD providing that

Cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods and Rule 57AH contains the provision for the recovery of Cenvat credit utilized wrongly. He relied upon the decision in the case of *Albert David Ltd. v. CCE, Meerut*, 2003 (151) E.L.T. 443 (Tribunal) = 2003 (106) ECR 418 (Tribunal).

5. We have considered the submissions of both the sides. Rule 57AC of Central Excise Rules, 1944 provided for the availment of Cenvat credit of the specified duty paid on any inputs. Rule 57AD(1) provided that Cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods except in the circumstances mentioned in Sub-rule (2). Sub-rule (2) of Rule 57AD provided that where a manufacturer's final products are chargeable to duty as well as are exempted, the manufacturers shall maintain separate accounts for receipt, consumption, and inventory of inputs meant for use in the manufacture of dutiable final products and the inputs meant for use in the manufacture of exempted goods and take Cenvat credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods. Sub-rule (2), further, provides that the manufacturer, opting not to maintain separate accounts shall pay an amount equal to 8% of the total price of the exempted final product. It has been contended by the appellants that they manufacture watches of M.R.P. up to Rs. 1000/- in the manufacture of which same inputs are used. It is only by Notification No. 6/2000-C.E., dated 1-3-2000 watches of retail sale price not exceeding Rs. 500/- per piece were exempted from payment of whole of the duty. It is the contention of the appellants that they manufacture now both the dutiable watches as well as exempted watches in the manufacture of which same inputs are used in respect of which they are not maintaining separate accounts and accordingly provisions of Sub-rule (2) of Rule 57AD will be attracted. It has not been disputed by the Revenue that the appellants were paying an amount equal to 8% of the total price of the exempted goods at the time of clearance of the exempted watches. The Revenue has disallowed the Cenvat credit as during the specified period of April to August, 2000 the appellants had not manufactured watches which were not exempted from payment of duty. The case of the department is that the appellants were not manufacturing both dutiable and exempted watches during the relevant period and as such they cannot take Cenvat credit and pay

only an amount equal to 8% of the price of the exempted watches. At first sight the contention of the Revenue appears to be attractive but we do not find much substance inasmuch as the notification exempting watches of retail price not exceeding Rs. 500/- came into effect on 1-3-2000. The fact that Cenvat credit has not been denied for the period March, 2000 shows that the appellants were manufacturing both the dutiable as well as exempted watches. Further, the classification declaration effective from 1-4-2000 submitted by the appellants clearly mentions wrist watches both valued up to Rs. 500/- and valued above Rs. 500/- which strengthen the submissions of the appellants that they intended to manufacture both types of watches. The show cause notice has been issued in January, 2001 only for the period from 1-4-2000 to 31-8-2000.

Nothing has been brought on record also to show that any further notice has been issued for the subsequent period commencing from September, 2000. On a query from the Bench the learned Advocate mentioned that the appellants did manufacture dutiable watches during the financial year, 2000-01. The appellants have also mentioned in the memorandum of appeal that they did manufacture both the dutiable and exempted watches which has not been controverted by the Revenue. We find force in the submissions of the appellants that the period cannot be segregated into two periods. The provisions of Rule 57AD(1) are attracted when the inputs are used in the manufacture of only exempted goods. Sub-rule (2) of Rule 57AD is -attracted when manufacturer is manufacturing both dutiable and exempted goods and is not maintaining separate accounts for the inputs. Sub-rule (2) nowhere mentions that on day-to-day basis the manufacturer is required to manufacture both the dutiable and exempted goods. In view of these facts provisions of Sub-rule (2) of Rule 57AD were attracted in the present matter. Accordingly the Cenvat credit is not disallowable to the appellants. All the appeals are, thus, allowed.

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