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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-08-2003

Judge : K Kumar, S T C.

Appellant : Otis Elevator Co. (i) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Shri Rohan Shah, Learned Advocate appearing on behalf of the appellants submitted that the impugned order traverses beyond the scope of show cause notices and as such there is a clear-cut violation of principles of natural justice and it is abinitio void. He further contended that the appellants have retaken the credit on the receipt of the processed inputs from the job workers to the extent of 10% of the reversed credit of the value of the inputs cleared to the job workers.

he also contended that the adjudicating authority as well as the Commissioner (Appeals) have failed to consider the following:- (a) At the time of the removal of the processed products by the vendor/job worker, he issues an excise invoice indicating the payment of excise duty on his inputs and the reversal of credit availed on inputs supplied by the Company. On receipt of the processed products from vendor/job worker on which no further activities carried out by the Company, the Company avails the modvat credit of the total duty paid by the vendor and cleared their final product on the payment of excise duty.

(b) In the situation as above, it is clear that credit is reversed by the Company prior to clearance of inputs to the vendor/job worker. The vendor/job worker who avails credit on such supplied inputs also reversed credit prior to clearance. Credit is thereafter taken by the Company on such inputs and utilized towards clearances on the duty paid final products. Credit is therefore, only effectively availed once as against the duty paid clearances of the final products.

2. Besides, he also submitted that from the invoice it is evidently clear that the appellants have taken prior permission. He drew our attention to page 13 of the Order-in-Appeal and submitted that the Commissioner (Appeals) himself has recorded that the primary manufacturer paid higher duty than was required under the rules. He contended that there has been full compliance with the provisions of Rule 57F (3) as such the balance of convenience lies in favour of the appellants for complete waiver of duty and penalty.

3. Shri S.S. Bhagat, SDR appeared on behalf of the Revenue and drew our attention to para 9 of the Commissioner (Appeals) Order, which is reproduced as under:- "From the above it is clear that the appellants as primary manufacturers were sending goods for further processing to the job worker under Rule 57F(3). The matter to be decided before the adjudicating officer was whether the appellants were eligible to avail modvat credit of duty paid on job worker's inputs which he utilized during the process and whether the assessee could avail modvat credit reversed by the job worker at the time of clearing the finished goods (modvat credit which was availed by the job worker for the inputs initially supplied by the primary manufacturer Otis Elevators Ltd.) and whether the appellants could avail modvat credit on the invoices issued by the job worker since the vendor's invoice did not include cost of certain inputs while arriving at the assessable value of the product processed by the job worker." 4. After hearing the rival submissions and perusal of the record, we are satisfied that the appellants have succeeded in making out a strong case in their favour for total waiver of predeposit of duty and penalty imposed on them. We, therefore, dispense with the requirement of pre-deposit of duty and penalty and stay recovery thereof during pendency of the appeals. The appeals to come up for regular hearing on 23.6.2003.