

Ceat Ltd. and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-01-2003

Reported in : (2003)(110)LC316Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Ceat Ltd. and ors.

Respondent : Cce

Judgement :

1. These three appeals have been filed against the decision of the Commissioner of Central Excise Mumbai II, made in October-in-Order No.20/2002 dated 25.2.2002 whereunder he has demanded a sum of Rs. 105,86,37,838.20 towards duty and imposed a penalty of equivalent amount under Section 11 AC of the Central Excise Act. The order also confiscated plant and machinery of both factories of the appellant and fixed the fine at Rs. 1 crore. The impugned order further ordered imposition of penalty on two of the employees namely R.K. Dawan and Velayuthan at Rs. 5 lacs each. The order also imposed penalty of Rs. 10 lacs on the assessee under Rule 173Q of Central Excise Rules.

2. The appellant is engaged in the manufacture of tyres and tubes falling under chapter 40 of the Central Excise Tariff Act 1985. They have two factories at Bhandup in Mumbai and Nashik in Maharashtra. In the Bhandup factory of the appellant, the appellant is also engaged in the manufacture of intermediate product called DIPPED TYRE CORD FABRIC out of the raw material purchased

from grey nylon tyre cord fabric manufacturers. The grey nylon tyre cord fabric is classified by such manufactures under chapter heading 5902 of the CETA. On the grey nylon tyre cord fabric, basic Excise Duty and Additional Excise Duty under the Additional Duties of Excise (Goods of Special Importance) Act were paid. Central purchase department of the assessee at Bhandup places order for grey nylon tyre cord for both factories namely Bhandup factory as well as Nashik factory. At the Assessee's Bhandup factory the grey fabric is received and it is subjected to process of dipping and coating within that factory. The purchase order indicated that the supplier should deliver the material to Ceat Ltd. Bhandup on behalf of Ceat Ltd., Nashik. The purchase order also requires the supplier to indicate in their invoice the name of the consignee as Ceat Ltd., Bhandup account Ceat Ltd., Nashik. The Nashik factory of the appellant had applied to the Central Excise authorities at Bhandup/Nashik to operate under Rule 57F(3) of the Central Excise Rules read with notification 214/86. Nashik factory does not have the facility to dip and coat the nylon tyre cord fabric. Therefore, it is the practice of the appellants that after procurement of grey nylon tyre cord fabric from the manufacturer to subject such grey fabrics to the process of dipping and coating at Bhandup factory only. The appellants from its Bhandup factory cleared the dipped tyre cord fabric in terms of Rule 57F(4) 57F(3) of the Central Excise Rules manufactured out of the raw material procured/purchased for purpose of its Bhandup factory and also for separately received by it on behalf of its Nashik factory. To put it in other words, Bhandup factory acted in a way as a job worker for Nashik factory, for carrying out the process of dipping and coating of the grey nylon tyre cord fabrics.

3. The department issued about 8 show cause notices. The show cause notice dated 31.3.2000 issued by the Anti Evasion wing of the department wherein it was mentioned inter alia that the appellant was evading the Central Excise duty by clearing dipped tyre cord fabric manufactured in their factory at Bhandup, to their factory at Nashik without discharging the Central Excise and the sister unit at Nashik were availing modvat credit wrongly on the inputs namely grey nylon tyre cord fabric, without receiving the said inputs in the Nashik factory and without using the same in the manufacture of the finished goods. As far as Bhandup factory is concerned, show cause notice dated 31.3.2000 charged at paragraph

4.1 thereof that as per the stock records maintained at Bhandup factory, it is revealed that the inputs required for manufacture of dipped tyre cord fabric, were purchased by Ceat Ltd., Bhandup, on their own account and purchase orders for procurement of raw materials were placed on the suppliers directly by the said Bhandup factory based on the requirement of both factories.

The notice further charges that the raw materials were received directly and consumed by Bhandup factory on their own account in their factory. Further the appellant has purchase of raw material were made directly by Bhandup factory and the cost of new material were recorded in the purchase cost of Bhandup factory. On the basis of the statements recorded from various officers of the appellant company, the show cause notice charges that the challans were prepared and issued at Bhandup as if raw materials/inputs were supplied by Ceat Nashik. It is further charged by the department that Nashik factory did not purchase any input therefore they could not have sent any inputs either from the factory or from the supplier directly and therefore the appellant have misdeclared the fact by issuing false Annexure-II challans. It is further charged by the department that all inputs were directly purchased and procured by M/s Ceat Bhandup which consumed the inputs, manufactured the DIPPED TYRE CORD FABRIC on their own account. On the basis of other allegations with which we are not dealing, as it is not relevant for the disposal of these appeals and on the basis of the replies filed by the appellant, the show cause notice proposed to demand duty of Rs. 71.53 crores on dipped fabric cleared from Bhandup factory and also proposed to deny, as far as Nashik factory is concerned, modvat credit on dipped nylon tyre cord taken at Nashik factory. The show cause notice also proposed to impose penalty.

Subsequent to the said show cause notices, the department issued 7 show cause notices from 11.12.2000 to 21.11.2001 proposing to demand duty of Rs. 3.70 crores from Bhandup on dipped fabric cleared from it to Nashik factory. These show cause -notices also proposed to impose penalty.

4. The appellant assessee replied to the said show cause notices stating that when the appellant placed orders on the manufacturers of raw material it was

done from the Centralised purchase department located at Bhandup and the purchase orders indicated that it was meant for Nashik as well as the Bhandup factory. According to the appellant, where the purchase order is meant for Nashik it was mentioned as NSK (page 38 to 43 of the paper book). The appellant also submitted that the DIPPED NYLON TYRE CORD FABRIC will not fall under Chapter heading 59.02 and claimed that it falls under heading 59.06. The appellant relied on the judgements of the Tribunal in the following cases Birla Tyres v. CCE 2001 (135) ELT 1313, Apollo Tyres Ltd. v. CCE , Falcon Tyres Ltd. v. CCE and MRF It is therefore pleaded before the adjudicating authority that the demand of duty of Rs. 75.23 crores was wrong. It was further pleaded before the adjudicating authority that the demand of basic excise duty under chapter heading 59.06 cannot be under the proviso to Section 11A of the Act since Nashik factory is eligible for modvat credit. It is the case of the appellant that when the centralised purchase organisation of the company namely appellant company earmarks the raw material for operation of the Nashik factory it specifically mentions in the order as NSK, and the Dipped Tyre Cord fabric was used in the manufacture of the final product namely tyre at Nashik factor}'.

Further this intermediate product namely dipped fabric is utilised in or in relation to the manufacture of final product namely tyre.

Therefore in terms of Rule 57A of the Central Excise Rules, the raw material namely the grey nylon tyre cord fabric has been utilised in or in relation to the manufacture of the final product namely tyre.

Therefore the invocation of the larger period for the demand made under the show cause notice, was wrong in law. As far as the demand of basic excise duty of Rs. 3.71 crores at Bhandup is concerned it has submitted before the adjudicating authority that for the period from September 1999 to December 2001, Nashik factory has paid the duty of Rs. 89.41 crores in cash. If 5.7 crores could have been paid in Bhandup factory the same would have been taken as modvat credit and the Nashik factory would have paid less duty in the PLA and therefore it was pleaded on the basis of the judgement of the Tribunal in the following cases namely CCE v. Chloride Industries reported at 1997 (22) RLT 586, Gopal Zarda v.

CCE 2001 (128) ELT : 409 2001 (96) ECR 162, the demand is wrong in law. It was further specifically pleaded before the adjudicating authority that input need not come to the factory where the final product is produced. The raw material can go directly to the factory situated outside the factory of production of the final product. That is what envisaged Rule 57F(4) of the Central Excise Rules and also the judgements of the Tribunal in this cases of Lupin Laboratories Ltd. v. CCE and Kinetic Motors adjudicating authority that CBEC circular dated 4.5.1994 was also relevant in this regard. It was further pleaded that adjudicating authority did not have jurisdiction in respect of Nashik factory. The adjudicating authority having considered the reply confirmed the demand raised in the show cause notices and imposed penalty and fine as mentioned in the earlier portion of this order. Hence the three appeals before us.

5. S/Shri V. Sridharan and R. Nambirajan, Advocates appeared for the appellant and Shri A. Chopra DR appeared for the department.

6. Ld. Advocate for the appellant while reiterating what is mentioned in the reply to the show cause notice also cited the judgement of the Tribunal in Venitron Chemicals v. CCE and M. Tex Processors v. CCE 2000 (91) ECR 588 for the proposition that person who operates under the procedure prescribed under Rule 57F(4) of the Central Excise Rules as job worker need not pay, duty on the intermediate product which is used in the manufactured of final product on which duty is paid.

7. We have considered this aspect. As stated in this order, the evidence disclosed in pages 38 to 44 of paper book (the purchase orders) clearly indicates that appellant entity Ceat Ltd. places orders for the raw material namely grey nylon tyre cord fabric. It indicates that as far as purchase order for grey nylon tyres cord fabric meant for Nashik factory is concerned, the same is specifically mentioned in the purchase order that the same is meant for Nashik factory and the order itself indicates that raw material should be forwarded to Ceat Ltd., Bhandup along with duplicate copy indicating consignee name as Ceat Ltd., Bhandup account Ceat Ltd., Satpur Nashik. The argument of Ltd. advocate is that when a manufacturer operates and the provisions of Rule 57F(4) of the Central Excise Rules he could

direct the supplier of the raw material to send the raw material directly to a place outside the factory of production under cover of challan for the purpose of carrying out operation necessary for the manufacture of final product or for manufacture of intermediate product necessary for the manufacture of final product and return the same to the factory.

Here the raw material supplier has forwarded the goods in terms of the order placed by entity namely Ceat to its Bhandup factory. It is a fact that Nashik factory did not have the facility of dipping and coating of nylon tyre cord fabric. Therefore after it is dipped and coated the same and is sent to Nashik factory by the Bhandup factory. It is not the case of the department that the procedures of Central Excise Rules have been violated. It is useful to refer to page 21 of the impugned order of adjudicating authority wherein he has held as follows: Now let us see the provisions of Rule 57F(4) that is enabling the movement of inputs for further process, which are reproduced below: (4) The inputs can also be removed as such or after they have been partially processed by the manufacturer of the final products to a place outside his factory under the cover of a challan specified in this behalf by the Central Board of Excise and Customs, for the purposes of test, repair, refining, reconditioning or carrying out any other operation necessary for the manufacture of the final products or for the manufacture of intermediate products necessary for the manufacture of final products and return the same to his factory within a period of sixty days...

What one can understand from the above provisions is that inputs can be removed for certain purposes. In the instant case it is not test, repair, refining or reconditioning of the inputs is being carried out. What is left out is any other operation necessary for the manufacture of the final product or for the manufacture of intermediate products. The operation should be a must for further manufacture of final product or intermediate product. It does not say that the operation must be manufacturing process itself. In fact, any other operation envisaged here does not extend to any manufacturing process at all. It specifically says that the inputs can be sent for any other operation necessary for the manufacture of intermediate products and not for the manufacture of intermediate products. What is fact is done at Bhandup factory is manufacturing of their intermediate product dipped tyre

cord fabrics. Hence, even if it is presumed that they were following correct procedure, the provisions of 57F(4) are not available to them.

8. The Tribunal in the case of Venitron Chemicals Supra has specifically held following the judgement of the Tribunal in Lupin Laboratories that it is not necessary for the Rule 57F(3) of the Central Excise Rules (as it then existed) and presently Rule 57F(4) of the Central Excise Rules to apply, with the raw materials must come to the premises of principal manufacturer before being sent to the job worker. Here there is no job worker in stricto sensu. Rule 57F(4) refers to the place outside the factory. Here there are two different factories of the same legal entity of the appellant.

The raw material earmarked for the Nashik factory has gone to Bhandup factory. After processing at Bhandup factory the same had been sent to Nashik for manufacture of final product. The same principle would be applicable here. We are therefore of the view that the adjudicating authority has misdirected himself in not following the spirit and true nature of the Central Excise Rules especially with reference to Modvat.

The raw materials need not directly go to the factory where final product is manufactured which in this case to the ear marked factory at Nashik. We are therefore of the view that the entire approach of the adjudicating authority is wrong in law. We therefore set aside the impugned order insofar as it relates to the two factories of the assessee are concerned. In view thereof the applicability of Rule 209A of the Central Excise Rules 1944 against the other two appellants does not arise.

9. After the order is dictated Ld. DR invited our attention to the demand made in respect of Rs. 29 crores namely the difference in the quantity of Dipped Tyre Cord fabric (at table III at para 3.4 of the show cause notice dt. 31.3.2000) cleared by Bhandup as per their transfer advice of Bhandup factory and annexure IV Register of Nashik factory. The same has been referred to in page 5 of the impugned order.

Further the impugned order refers to the reply of the assessee in this regard. We have scanned through the discussion portion of the impugned order. We do not

find any proper discussion having been made by the adjudicating authority. We, therefore even though allow the appeal, as far as this portion of the show cause notice is concerned, remand the matter to the jurisdictional adjudicating authority for giving a proper finding with reference to the allegation contained in paragraph 3.4 of show cause notice dated 30.3.2000 after following the principles of natural justice. With the observation, the appeals are disposed of.

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