

Gail Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-02-2003

Reported in : (2003)(89)ECC20

Judge : S Kang, a T V.K.

Appellant : Gail

Respondent : Cce

Judgement :

1. In this appeal filed by M/s. Gas Authority of India Limited, the issue involved is whether the inputs in respect of which Modvat/Cenvat Credit has been availed of have been used in the manufacture of Lean gas which is exempted from payment of Central Excise duty and consequently the Appellants are required to pay an amount equal to 8% of the price of Lean gas under Rule 57CC/Rule 57AD of the Central Excise Rules, 1944.

2. Shri V. Lakshmi Kumaran, Learned Advocate, submitted that the Appellants manufacture various final products including LPG; that the main raw material is natural gas or feed natural gas; that the feed gas is compressed and fed to the plant and treated in Gas Sweetening Unit (GSU) and Gas Processing Unit (GPU) for removal of impurities; that from the feed gas so treated, heavier hydro-carbons or components, namely, C2, C3, C4 and LPG are extracted for down stream manufacture of the final products; that after extraction of the heavier hydro-carbons or components, the feed gas is compressed back to Auriya compressor

station; that such feed gas is known as exit natural gas or lean gas which is sold to consumers like M/s. Indo-Gulf; that the Joint Commissioner, who visited their plant on 1.12.2000, directed them to reverse Modvat Credit availed of on the inputs used in the GSU and GPU as Lean gas is exempted from payment of duty; that accordingly the appellants reversed the total Modvat Credit of Rs. 1.84 crores under intimation to the Joint Commissioner; that the Commissioner under the impugned Order has confirmed the demand of duty and imposed equal amount of penalty on the ground that they had availed Modvat Credit on the inputs used in GSU and GPU and that such inputs were used in the manufacture of both dutiable final products and exempted final product, namely, Lean gas. The learned Advocate, further, submitted that the issue involved stands decided by the Tribunal in their own case as reported in 2001 (47) RLT 740 (T); that it has been held by the Tribunal that since lean gas is a by-product, the provisions of Rule 57CC would not be applicable. He also mentioned that it has been held in the following decisions that the provisions of Rule 57CC would not apply to byproduct. *Arti Drugs Ltd. v. CCE*, 3. He also contended that as the Appellants have reversed the entire credit availed of on the inputs in compliance with the direction of the Joint Commissioner, invoking Rule 57C or Rule 57CC/Rule 57AD is incorrect; that the reversal of credit of the duty availed on the inputs would amount non-availment of credit and hence the provisions of Rule 57CC are not attracted.

4. Countering the arguments, Shri M. Chandrashekharan learned Senior Advocate, submitted that the Appellants themselves in a reply to a query regarding the specification of natural gas at various stages vis-a-vis the exit natural gas have submitted that lean gas is not a product which is coming out of manufacturing process; that they have, further, mentioned that it is neither joint product nor by-product nor co-product in the sense that manufacturing process is not involved to derive it but it is inevitable left over after processes have been achieved their purpose of extracting C2, C3 and LPG. The learned Senior Counsel contended that once the Appellants themselves say that Lean Gas is not a by-product the provisions of Rules 57D of the Central Excise Rules, 1944 would not apply. The learned Senior Advocate for the Appellants at this stage referred to para 18.2 of show cause notice in which it has been mentioned that lean gas is distinctly identifiable by-product and contended that as per the Revenue the lean gas is

nothing but by-product which is manufactured, when natural feed gas is subjected to a complex process of extracting C2, C3 and higher hydrocarbons, while manufacturing HDPE, LDPE and LPG. The learned Senior Counsel for the Revenue countered by referring to para 12 of the impugned Order wherein the Commissioner has specifically met this argument; that the Commissioner has observed in the impugned Order that the show cause notice was contoured around the contention of the appellants that lean gas was undesired residual raw material which was not in the nature of manufactured product, by product, joint product or co-product arising from the manufacturing process; that no analysis of whether lean gas was a by-product or final product had been carried out in this show cause notice; that it would, therefore, not be appropriate to conclude that the Department had already established that the lean gas is a by-product because it had been referred as by-product at one place in the show cause notice. The learned Senior Advocate also mentioned that according to the Concise Oxford Dictionary by-product means and incidental or secondary made in the manufacture of something else; that the Appellants have not declared lean gas as a by-product either while applying for registration or in the classification declaration filed by them under Rule 173B. Reliance has also been placed on the decision in the case of GTC India v. CCE, Vadodara, 2001 (129) ELT 513 (T) wherein the Tribunal has held that duty is payable on tobacco waste, if any, falling under Sub-heading No. 2401.10 even if attracting nil rate of duty.

5. We have considered the submissions of both the sides. The issue involved in the present appeal in no more res. Integra as the Tribunal in the case of Gas Authority of India v. CCE, Mumbai and Vadodara (supra), has considered the same question in the case of appellants another plants falling in the jurisdiction of other Commissionerates.

The Appellate Tribunal has observed that "in the light of the admission made by both the authorities that the lean gas is a by-product, it is not known why the adjudicating authority and the appellate authority consistently persisted in denying the very contention of the Appellants." The Tribunal has, further, held that "when a manufacturer sets out to create a product out of certain raw materials, he not only creates the product but also creates other goods which are refuse, waste or by-

product. The classification of goods into final products, by-products, waste and refuse is mainly on commercial consideration and the Plan of manufacture. The scheme of Modvat Credit acknowledges this.

Rule 57D provides as follows: "Credit of duty not to be denied or varied in certain circumstances, -- (1) Credit of specified duty shall not be denied or varied on the ground that part of the inputs is contained in any waste, refuse, or by-product arising, during the manufacture of the final product, or that the inputs have become waste during the course of manufacture of the final product, whether or not such waste or refuse or by-product is exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty or is not specified as a final product under Rule 57A." The Tribunal has held in the Appellants own case that lean gas obtained by processing natural gas to remove propane and butane is nothing but a by-product and the provisions of Rule 57CC were not applicable to lean gas and the benefit of Rule 57D has been extended.

6. The Appellate Tribunal in the Appellants' own case has relied upon the decision in the case of Arti Drugs Limited (supra), wherein it has been held that provisions of Rule 57CC would not apply in the case of by-product. It has been observed by the Tribunal that "by insertion of Rule 57CC, there was no intention to eliminate the benefit available under Rule 57D(1) to a by-product." The Tribunal following the ratio of the Arti Drugs Limited case, allowed the appeal filed by the Gas Authority, of India Limited. We also observe that this Tribunal in the case of IOC Limited and Hi-Tech Carbon has allowed the appeals following the ratio of the Gas Authority of India Limited. Thus, following the ratio of this decision, we set aside the impugned Order and allow the appeal.

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