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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-31-2003

Reported in : (2003)(161)ELT804TriDel

Judge : P Chacko

Appellant : Flex Industries Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The adjudicating and first appellate authorities have denied Modvat credit of countervailing duty of Rs. 80,228/- to the appellants in respect of Colour Proofing Film (Tariff sub-heading No. 3702.90), which was used in April, 1998 in connection with the manufacture of Gravure Printing Cylinders (GPC, in short). The appellants are manufacturers, inter alia, of printed/unprinted articles of plastics in roll form (Tariff sub-heading No. 3920.38).

The printing part of the manufacture is done with GPC. The GPC is prepared in the following manner :- Colour Proofing Film in roll form is fitted in the Colour Proofing Machine. A positive of the design (supplied by the customer) is passed through the Colour Proofing Machine when the film is layered on the sheet containing the positive design. The colour of the Proofing Film gets stuck-up on the positive, whereby a coloured design emerges, which is visible to the naked eye. This colour design is then sent to the customer for approval. After obtaining the customer's approval for the colour design, the appellants use it for the

manufacture of GPC, which is then used for printing purpose in the process of manufacture of the final product to be supplied to the customer.

The Colour Proofing Film on which the Modvat credit in question was taken was used by the appellants in the above manner. The show-cause notice, which proposed to disallow the credit, alleged that the Colour Proofing Film was not used in or in relation to the manufacture of the final product as the proofing was taken after completion of manufacture of cylinders.

The adjudicating authority also held that the Colour Proofing Film was used in post-manufacturing activity and hence could not be referred to as input under Rule 57A of the Central Excise Rules, 1944. On the other hand, the Commissioner (Appeals), rejecting the assessee's appeal against the order of the original authority, held that the Colour Proofing Film was used before the start of the process of manufacture of GPC.2. In the present appeal, it is contended that the finding recorded by the lower appellate authority is beyond the scope of the allegation made in the show-cause notice. The show-cause notice alleged that the use of the Colour Proofing Film was a post-manufacturing activity, but the Commissioner (Appeals) has held that the film was used before the start of manufacture of GPC. It has also been contended that the activity of taking proof of design by using the Colour Proofing Film was integrally connected with the ultimate manufacture of the final product and that, without such activity, it was not possible at all to manufacture the final product ordered by the customer. In this connection, reliance has been placed on the Supreme Court's decision in J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. STO [1997 (91) E.L.T.34].

The Tribunal's Larger Bench decision in the case of Union Carbide India Ltd. v. CCE [1996 (86) E.L.T. 613] has also been relied on by the appellants in support of their contention that the Colour Proofing Film was used in relation to the manufacture of GPC. The Company's authorized representative reiterates the above grounds. The JDR reiterates the findings contained in the impugned order.

3. I have carefully examined the submissions. The manner of use of the Colour Proofing Film in connection with the manufacture of GPC has already been stated and the same is not in dispute. The Company's representative has given an

amplification of the process. He has stated that, if a customer requires a multi-coloured design for printing on their packing material, they will place order with the appellants for so many GPCs as there are different colour elements in the required design. This is because proofing films of different colours cannot be used for the manufacture of one GPC. GPCs of different colour designs can be manufactured by using only different Colour Proofing Films and the ultimate printing of the multi-colour design on the customer's packing material would be done by a combination of all the GPCs bearing different colour designs. It appears to me that the use of the Colour Proofing Films certainly an activity integrally connected with the manufacture of GPCs and the same should be held to be in relation to the manufacture of GPCs. The reliance placed by the appellants on the Supreme Court's decision in J.K. Cotton Spinning & Weaving Mills and the Larger Bench decision in Union Carbide India Ltd. is quite apposite. The impugned order cannot be sustained and the same is set aside. The appeal is allowed.

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