Electrolux Kelvinator Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-10-2003

Reported in : (2003)(90)ECC839

Judge : A T V.K., P Chacko

Appellant : Electrolux Kelvinator Ltd.

Respondent : C.C.E.

Judgement :

1. The issue involved in this appeal, filed by M/s. Electrolux Kelvinator Ltd., is whether the Modvat Credit of duty paid on inputs used in relation to manufacture of goods destroyed in fire is available to them.

2. Shri B.L. Narasimhan, learned Advocate, submitted that the Appellants manufacture refrigerator; that on 17.6.200 there was a fire accident due to which refrigerators stored in newly constructed bonded room were destroyed; that immediately after fire accident the information was given to the department; that they filed an application dated 14.12.2000 with the Commissioner for seeking remission of the duty payable on 5900 refrigerators which were burn in fire accident; that the Commissioner under the impugned Order granted remission of duty on the said refrigerators; that he, however, disallowed that Modvat Credit contained in the said refrigerators on the ground that as soon as the duty is remitted the goods acquired the status of exempted goods/ not liable to discharge duty liability. The learned Advocate submitted that this issue is no more res integra

as the Tribunal in the case of Inalsa Ltd. vs. CCE, New Delhi-1997 (90) ELT 417 (Tri.) has held that the inputs had been put to intended use of manufacture of the final product which were destroyed by fire and duty thereon had been remitted under Rule 49 of the Central Excise Rules; that "the final product had not suffered duty only as result of remission of duty given on fulfilling the conditions, therefore, under Rule 49 which is not to be equated to a general exemption from duty or the goods being charged to nil rate of duty". The Tribunal, therefore, held that "invoking rule 57C on the facts and in the circumstances of this case is not sustainable." The learned Advocate finally mentioned that similar views have been held by the Tribunal in the case of Kirloskar Electric Co.

Ltd. vs. CCE, Bangalore-2002 (141) ELT 224 (Tri) and MRF Ltd. vs. CCE, Chennai-2003 (55) RLT 936 (CEGAT). Finally he mentioned that the Board vide Circular no. 650/41/2002-CX dated 7.8.2002 had clarified that "Modvat/Cenvat Credit of duty paid on the inputs contained in finished product on which duty remission has been granted shall be admissible and reversal thereof shall not be necessary." 3. We observe that the issue involved in the present appeal has been settled by the Appellate Tribunal in the case of Inalsa Ltd. on the basis of which subsequently central Board of Excise & customs has also issued circular dated 7.8.2002. In the present matter it is not in dispute that the inputs have been used in or in relation to the manufacture of the final product namely refrigerators which have been destroyed in fire. The Commissioner under the impugned Order has also granted remission of duty thereon. Accordingly following the ratio of the Tribunal's decision relied upon by the learned Advocate and Board's circular we set aside the impugned Order relating to the demand of Modvat Credit and allow the appeal.