

Vikas Forging Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-10-2003

Reported in : (2004)(177)ELT819TriDel

Judge : P Chacko

Appellant : Vikas Forging Pvt. Ltd.

Respondent : Cce

Judgement :

1. The appellants were engaged in the manufacture of steel forgings and were availing the facility of Modvat credit on inputs during the relevant periods. The forgings supplied by the appellants to some of their customers were returned by the latter on account of defects. The customers also reversed the Modvat credit which they had earlier taken on the goods. The appellants, upon receipt of the defective goods, treated them as inputs and converted the same into fresh forgings according to the specifications of new buyers. They took Modvat credit on the defective forgings and utilized the same for payment of Central Excise duty on the new forgings. The Modvat credit so taken amounted to Rs. 44,262.73 P which was disallowed by both the Assistant Commissioner and the Commissioner(Appeals). Hence the present appeal.

2. Heard both the sides. The learned Counsel for the appellants submits that the defective goods returned by their customers were subjected to the same process of manufacture was the one employed originally for the manufacture of those

goods. This fact was adequately explained to the lower appellate authority but that authority did not appreciate the same. The finding recorded by the Commissioner (Appeals) to the effect that the appellants did not substantiate their plea of re-manufacture cannot be sustained inasmuch as, in the appellants' own case, the Commissioner (Appeals) had, for an earlier period, accepted the said plea. In this connection, the learned Counsel refers to order-in-appeal No 2CE/2002 dated 31.12.2002 passed by the Commissioner (Appeals), Faridabad in the present appellants' own case. He further relies on a few decisions of the Tribunal's larger Bench, which are cited below :- It is pointed out that, in each of the cited cases, it was held that, where a final product rejected and returned by the buyer was subjected to re-manufacture, it would be treated as input and the duty paid thereon would be available as Modvat credit to the manufacturer under Rule 57-A of the Central Excise Rules, 1944.

3. The learned SDR seeks to distinguish the instant case from the cited cases. It is her submission that, in the instant case, unlike in the cited cases, adequate factual basis of the plea of re-manufacture was not provided by the appellants. She contends that the larger Bench decisions can be applied only where re-manufacture is established as in those cases. In the earlier case of these appellants, apparently they could substantiate the plea of re-manufacture. On the facts of the instant case, the appellants cannot succeed.

4. I have examined the submissions. The process of manufacture employed by the appellants is what is called forging process. Where a defective forging is returned by a customer, it is subjected to what is called re-forging process. The forging and re-forging processes of the appellants have been stated in order-in-appeal No. 2CE/2002 dated 31.12.2002 cited by the Counsel. Relying on these processes, the Commissioner (Appeals) allowed Modvat credit on the defective forgings which were put to re-forging process. This happened in the present appellants own case for a different period. In the instant case, the impugned order itself reproduces the appellants' submission regarding re-manufacturing, which is extracted below :- "At times forged items which do not fit machining fixture/jig due to dimensional variation or mis-match-it could be any forged component-are returned back for RE-. These pieces are genearily RE- in the freshly repaired Die after hearing upto the

right temperature. This is a standard practice in forging technology and is called RE-." The re-manufacturing referred to above is, obviously, the same as re-forging referred to in order-in-appeal No 2/CE/2002 dated 31.12.2002 passed by the same authority in the appellants' own case. If that be so, the finding recorded in the impugned order that the appellants have not been able to substantiate their claim that defective forged goods received by them can be treated as inputs, cannot be accepted as well-founded. There is no dispute of the duty-paid nature of the defective forgings received by the appellants and utilized in the re-forging process. Both the original forging process and the re-forging process are substantially identical, the only difference being that, in the original process, bars or rods or steel are used as inputs, while in re-forging, the defective forgings returned by customer are the inputs. The processes are, by and large, identical.

This plea was adequately raised before the lower appellate authority but it appears to have been overlooked. The larger bench decisions cited by the learned Counsel are all in support of the appellants' case. The gist of these decisions is that, where defective final product returned by the customer is subjected to fresh process of manufacture to yield defect-free product, it would be treated as input for the purpose of availment of Modvat credit under Rule 57-A.5. In view of the above findings, the appeal succeeds. The impugned order is set aside and the appeal is allowed.

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