

Special Tools P. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-17-2003

Reported in : (2004)(92)ECC150

Judge : P Bajaj

Appellant : Special Tools P. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal has been directed against the impugned Order-in-Appeal dated 23.5.2003 vide which the Commissioner (Appeals) has confirmed the Order-in-Original of the adjudicating authority. The facts are not much in dispute. The appellants claimed modvat credit of the disputed amount in respect of the defective goods which they cleared from their factory after removing the defects to the customers, who had earlier sent them as defective goods. They were served with the show cause notice for the recovery of the amount which they had illegally claimed as modvat credit, but they in reply had stated that the processes carried out by them on the defective goods was the same which they adopted earlier at the time of manufacture of the goods. The adjudicating authority did not accept their version and denied the modvat credit. That order was affirmed by the Commissioner (Appeals). But the appellants challenged its correctness before the Tribunal and the Tribunal vide its Final Order dated 30.1.2001 while disposing of the appeal, remanded the matter by giving specific direction to the adjudicating authority to ascertain as to whether the defective parts returned to the appellants

had been reprocessed by them in their factory in the same manner as they used to process the raw material for manufacture of the final products in the normal course. In order to comply with this direction of the Tribunal, the adjudicating authority afforded 3 personal hearing to the appellants and thereafter visited their factory premises on 31.7.2001 on their request to have a first hand knowledge about the processes being carried out by the appellants on the goods received by them for rectification of the defects. The adjudicating authority, however, found that the same processes were not being carried out by the appellants and the processes conducted by them on the defective goods for rectification did not amount to manufacture. The adjudicating authority disallowed the modvat credit through the Order-in-Original.

That order had been affirmed by the Commissioner (Appeals) through the impugned order.

2. The learned Counsel has not contested the correctness of the findings recorded by the adjudicating authority that the processes being carried out by the appellants on the defective goods for rectification was not the same which were being adopted by them in the manufacture of their final products. That being so, the appellants had been rightly disallowed the modvat credit. The contention of the learned Counsel that the claim of the appellants under Rule 173H should have been in the alternative consideration as they made a request before the adjudicating authority in this regard, cannot be accepted.

No such plea was taken by them even in their reply to the show cause.

There was no such direction by the Tribunal while remanding the case that the alternative plea of the appellants in terms of Rule 173H will be considered by the adjudicating authority. Even after the remand when the adjudicating authority afforded 3 effective opportunities to the appellants they did not make any request in writing giving detailed reasons and the grounds for considering their claim under Rule 173H. They only submitted flow charts in respect of the various processes that had been taken by them to rectify the defective goods, which was duly considered by the adjudicating authority, but no request for considering the claim under Rule 173H was ever filed. Therefore, for the first time at this stage, they

cannot be permitted to urge for the consideration of their claim under the said Rule.

3. In view of the discussion made above, I do not find any illegality in the impugned order and the same is upheld. The appeal of the appellants is dismissed.

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