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Commissioner of Central Excise Vs. Boc India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-2003

Reported in : (2004)(166)ELT254TriDel

Judge : A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Boc India Ltd.

Judgement :

1. In this Appeal filed by the Revenue, the issue involved is whether the Modvat credit is to be disallowed in respect of gases lost during production.

2. When the matter was called, no one was present on behalf of the respondents. In fact the notice issued to them for hearing has been returned back by the Postal authorities with the remarks 'left'. I therefore, heard Shri H.C. Verma, learned Departmental Representative and perused the records. Learned Departmental Representative submitted that while checking the monthly RT 12 returns of M/s. BOC Ltd., it was found that they were debiting some quantity of gases in their RG 23A, Part I register with the remark that gases lost during production. The Assistant Commissioner, under Order-in-Original Nos. 113-119/99 dated 31-5-99, disallowed the Modvat credit in respect of the quantity lost and imposed penalty; that the Commissioner (Appeals) however, under the impugned Order has allowed their Appeal holding that manufacturing process and nature of inputs, namely Nitrogen/liquid argon gas render losses of certain quantity inevitable and portion of

gas which evaporates in the atmosphere, can not be considered as not having been used in or in relation to the manufacture of final products. The learned Senior Departmental Representative, further, submitted that the Appellate Tribunal in the case of Rajiv & Co. v. CCE, Chandigarh [1995 (80) E.L.T. 429] has held that the word 'waste' used in Rule 51D has a specific meaning that a part of inputs should be contained in the waste and the loss is entirely a different phenomenon. He, finally, submitted that the Commissioner (Appeals) has also relied upon the Tribunal's decision in favour of the respondent themselves; that the Department has already filed a reference application on the similar issue in the Hon'ble High Court of Delhi.

3. I have considered the submissions of the learned Departmental Representative and perused the records. A perusal of documents filed by the Revenue, reveal that some quantity of Nitrogen/Argon gas was lost during production. This itself goes to show that the gas has been taken in process of manufacture where it was lost on account of its nature.

I, therefore agree with the learned Commissioner (Appeals) that portion of gas which evaporates in the course of manufacture can not be considered as not having been used in or in relation to the manufacture of the final products. Further, the Appellate Tribunal has already decided the matter in favour of the Respondent against which the Revenue has filed a reference application with the Hon'ble Delhi High Court. The Revenue has not brought on record any stay of the said Order and as such the Commissioner (Appeals) has rightly followed the said decision by passing the impugned Order. The decision in the case of Rajiv & Co. relied upon by the learned Departmental Representative is not applicable as the facts are entirely different. In the said matter M/s. Rajeev & Co. were engaged in filling the compressed Oxygen in cylinders, which they were getting through the pipe lines and the Excise Officer observed that a sizeable quantity of Oxygen gas was not accounted for. In view of these facts, the Tribunal held that the loss of Oxygen gas did not fall within the purview of Rule 57D as oxygen was cleared as such on payment of duty and remission of duty was not admissible of quantity of oxygen lost. Accordingly, the Revenue's appeal is rejected.

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