Commissioner of Central Excise Vs. Mrf Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-19-2004

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Mrf Ltd.

Judgement :
1. This is revenue's appeal against the order-in-appeal passed by the Commissioner (Appeals). The Commissioner (Appeals) rejected the revenue's appeal against the order-in-original whereunder the claim of the respondents for Modvat credit in respect of certain capital goods was accepted and the demand notice proposing the denial of credit was dropped. The instant appeal of the revenue therefore pleads for denial of credit.

3. I note that the capital goods in question in this are the old machinery and moulds, which the respondents sent to the job workers. It is noted by the Commissioner (Appeals) that due to extensive replacement of components and processing carried out on the old machines, the excise officers in charge of the job worker's unit had insisted that the reconditioned capital goods be cleared on payment of duty treating the repair activity to be amounting to manufacture. The excise authorities having jurisdiction over the respondent's unit however, held a view that since the repair does not amount to manufacture, no duty was payable on the capital goods and hence the credit is not admissible. The original as well as appellant authority disagreed with this proposition and hence the revenue's

appeal.

4. I have considered the rival submissions. The respondents have placed reliance on the judgment of Cegat in the case of Ownes Bilt Ltd. Vs.

Commissioner of Central Excise, Pune, reported in 1998 (101) ELT 642 (Tribunal) to claim that credit is admissible. The revenue appeal though refers to the said case law no contrary material is produced to support a different view as claimed in appeal.

5. On the contrary I note that there are a catena of judgments which hold the view that the excise authorities at the end of the user of input (or capital goods) have no jurisdiction or authority to contest the correctness or otherwise of the duty paid by the supplier some of these case law are also enumerated below : (ii) Eveready Industries I Ltd. Vs. CCE Allahabad 1998 (103) ELT 672 (Tri.) (iii) Bharat Aluminium Co. Ltd. Vs. CCE. Raipur 2002 (102) ECR 848 (Tri.).

6. Following the ratio of the above judgments, the revenue appeal is hereby rejected.