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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-06-2004

Judge : J Balasundaram, M T K.D.

Appellant : Siemens Limited

Respondent : Commissioner of Central Excise

Judgement :

1. The assessed who are manufacturers of electric motors, switch gear items, switch board items, etc., challenge the confirmation of total duty demand of Rs. 6,52,642/- and penalty of equal amount confirmed against them by the authorities below.

a) Demand of Rs. 5,55,483/-:- This demand has been confirmed on inputs cleared as such on the ground that the appellants were required to reverse duty equal to modvat credit taken thereon as per provisions of Rule 57F(1)(ii)/57F(4) of the Central Excise Rules, 1944. In the light of the decision of the larger bench of the Tribunal in the case of CCE, Vadodara v. Asia Brown Boveri Limited 2000 (120) ELT 228 this demand is sustainable and we accordingly uphold the same. However, we set aside the penalty equal to the above amount which has been imposed under Rule 571(4) of the Central Excise Rules, 1944, for the reason that Rule 57F(4) is not applicable as credit has not been taken wrongly by reason of fraud, wilful misstatement, collusion or suppression of facts or contravention of any of the provisions of the Act or Rules made thereunder with intent to evade payment of duty and further the provisions of the Rule 571(2), stipulating that if any inputs in respect of which credit has been taken, are not fully accounted as having been disposed of in the manner specified in this section, the manufacturer shall upon written demand being made by the Assistant Commissioner of Central Excise, pay the duty leviable on such inputs within three months from the date of receipt of the demand notice, are not attracted as the duty was paid even before issue of any written demand.

b) Demand of Rs. 86,896/-:- This demand has been confirmed by inclusion of sorting and loading charges of scrap in the scrap yard of the appellants' factory where the sorting and loading was carried out by their buyers/customers. We find that these expenses are incurred before the goods leave the factory gate, i.e., place of removal, and therefore, even though borne by the buyers, have been rightly included for arriving at their assessable value under Section 4 of the Central Excise Rules, 1944 and the submission of the appellants that sorting and loading is not carried out by their buyers/customers on behalf of the appellants, is not acceptable in the absence of any material on record, such as contract, etc., to establish that the contract was for sale of goods on "as-is-where-is" basis. However, we set aside the penalty imposed under Section 11AC in the absence of any finding that the duty on sorting and loading expenses was not paid due to suppression or misstatement on the part of the appellants.

c) Demand of Rs. 8,263/-: This demand has been confirmed under Rule 57U(2) of the Central Excise Rules, 1944 on capital goods (tools) manufactured by the appellants and captively consumed, on the ground that the benefit of exemption Notification 67/95 dated 16/03/1995 is not available as the tools were consumed captively in the manufacture of exempted products.

A careful reading of the Notification 67/95 (sic) shows that the exemption benefit is not available to inputs used in or in relation to the manufacture of final products which are exempt from excise duly or chargeable to nil rate of duty and there is no exclusion from the benefit of the exemption to capital goods used in or in relation to the manufacture of the final products which are exempt from duty or chargeable to nil rate of duty. We therefore set aside this demand and the penalty of equal amount.

3. In the result the demands of Rs. 5,55,483/- and Rs. 88,896/- are upheld; duty demand of Rs.8,263/- set aside; liability to interest and all penalties are also set aside. The appeal is thus partly allowed.