

The Commissioner of Central Vs. Raymond Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-26-2004

Judge : M T K.D.

Appellant : The Commissioner of Central

Respondent : Raymond Ltd.

Judgement :

1. The revenue appeal is directed against the order of the Commissioner (Appeals). In the impugned order, the Commissioner (Appeals) had agreed with the respondents that the respondents are entitled to take full credit in respect of fuel, which is used in the manufacture of steam, a part of which (steam) is cleared outside the factory without being used within the respondents' factory for manufacture of final goods. The respondents had sought refund of Rs. 2,90,973/- being an amount of credit that was reversed in respect of fuel used for generation of steam which was cleared outside the factory. Steam is exempted from duty. The issue involves interpretation of provisions of Rule 6 of Cenvat Credit Rules, 2001. The respondents succeeded in obtaining a favourable order from the Commissioner (Appeals) and the said order of the Commissioner is under challenge in the instant appeal from the revenue.

3. On going through the show cause notice issued to the respondents, it is seen that, the refund claim filed by the respondents was proposed to be rejected on two grounds. The first ground was that the claim was tiled on the basis of judgment of the Tribunal in the case of Indore Steel & Iron Mills v. CCE, Indore reported in

2002 (147) ELT 611 (Tri.Del). The other ground was the applicability of clause of unjust enrichment. The claim was rejected on the first ground by the adjudicating authority wherein it is also observed that, in the event the claim succeeds on merit subsequently, the clause of unjust enrichment will also be applicable. The order of the Commissioner (Appeals) accepts the claim on merits. However, the same is silent on the issue of unjust enrichment, which ought to have been decided by the Commissioner (Appeals), having accepted the admissibility of the claim on merits.

4. The revenue appeal challenges the order of the Commissioner (Appeals) on both the grounds.

5. The Ld. DR supports the grounds in appeal whereas the respondents are strongly contesting that the impugned order-in-appeal is legal and proper.

6. I have considered the rival submissions. As can be noted from the show cause notice, the respondents had reversed the credit of duty paid in respect of that quantity of fuel, which was used in the quantity of steam that was cleared outside the factory. The respondents have filed on the claim for refund on coming across the judgments of the Tribunal in the case of M/s Indore Steel & Iron Mills Ltd., (Supra). The said decision relates to interpretation of Rule 57C and 57CC of Central Excise Rules and is not concerned with the Rules 6 of the Cenvat Credit Rules, 2001. It is claimed by the Ld. Counsel for the respondents that the Rule 6 is identically worded with the provisions of Rule 57C(1) and 57CC, and being *pari-materia* the interpretation in the case of M/s.

Indore Steel & Irons Mills Ltd., (Supra) should be applied in the instant case.

7. The respondents have also placed reliance on the judgment of the Tribunal in the case of National Engineering Industries Ltd.. v. CCE, Jaipur reported in 2002 (150) ELT 161 (Tri.Del.) and the decision in the case of CCE, Tirunelveli v. Sudarsanam Spinning Mills reported in 2004 (166) ELT 461 (Tri.-Chennai), which reiterates the same position as held in the case of M/s Indore Steel & Iron Ltd.(Supra).

8. I find that in the aforesaid decisions, co-ordinates benches have taken view that, since Sub-rule (2) of Rule 6 of Cenvat Credit Rules, 2001 excludes fuels, the requirement of payment of amount equivalent to 8% is not applicable.

9. In order to understand the precise nature of the controversy, the provisions of Rule 6 are extracted hereunder- "1. The Cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods, except in the circumstances mentioned in Sub-rule (2).

2. Where a manufacturer avails of Cenvat credit in respect of any inputs, except inputs intended to be used as fuel, and manufactures such final products which are chargeable to duty as well as exempted goods, then, the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and the quantity of inputs meant for use in the manufacture of exempted goods and take Cenvat credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods.

10. The respondents have pleaded that, what they have reversed does not represent the 8% amount, but the actual credit of duty paid on that quantity of fuel (furnace oil) which has been utilised in the generation of the steam that was cleared without payment of duty from the factory. It therefore follows that (sic) in this case in on a aspect (sic) them the one discussed in the orders of the Tribunal which have been cited in support by the respondents. The controversy in the said judgments centred around the point as to whether in a situation of use of fuel in the manufacture of duty paid and exempted final products, a manufacturer is required to reverse the amount of 8% of the price of finished goods (exempted goods). It is obvious on referring to the provision of Rule 57C and 57CC and the cited judgments that there can be no question of demanding 8% amount even in the new rule viz Rule 6(2) of Cenvat Rules 2001.

11. I note that in this case, the appellants have admittedly reversed the credit of duty paid on "fuel" which was used in generating a certain quantity of steam which was cleared outside the factory. It is nobody's case that the appellant's reversed 8% amount. The refund relates to the amount of credit on the fuel actually

consumed in the manufacture (generation) of steam cleared outside the factory. Rule 6(1) of the Cenvat Rules 2001 itself covers this situation by stating that such a reversal is required. The only exception to this rule, is as could be seen from the text of the rule extracted above, are the circumstances mentioned in Sub-rule (2). The said sub-rule itself makes it clear that the said Sub-rule (2) is not applicable to inputs intended to be used as fuel. The cumulative reading of these two rules make it abundantly clear that the circumstances specified in Sub-rule (2), which inter-alia requires separate accounting of inputs, etc. are not applicable to the fuel. The said Sub-rule (2) nowhere says that the legal effect of Sub-rule (1) will stand terminated in respect of inputs which do not figure in Sub-rule (2). In other words, the legal effect of Sub-rule (1) has to be applied to all inputs including fuels only exception being non-fuel inputs which maintain separate accounts and hence are to take restricted credit or in its absence pay 8%.

Therefore, it is obvious that, Sub-rule (1) shall apply in respect of fuel and on such an application, the credit is not permissible on such quantity of fuel, which is used in the manufacture of exempted goods.

12. On the basis of the analysis made above, I hold that the reversal of modvat credit on the inputs (furnace oil) used as fuel was correctly made by the respondents in terms of Rule 6(1) and there is no case for refund.

13. Consequently, the revenue appeal is allowed, and impugned order passed by Commissioner (Appeals) is set aside.

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