

Saveair India Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-12-2004

Reported in : (2005)(99)ECC29

Judge : A T V.K., P Bajaj

Appellant : Saveair India Ltd.

Respondent : C.C.E.

Judgement :

1. Shri R. Krishnan, learned Advocate, submitted that M/s. Saveair India Ltd., manufactured parts of air-conditioning system, exhaust units and scrap of iron and aluminium and availed MODVAT Credit of the duty paid on the inputs; that they were selling their finished goods on F.O.R. destination basis and have taken transit risk insurance policy for covering the risk of the goods from factory gate to the customer site. The Revenue has confirmed the demand of duty by including the cost of freight and insurance in the assessable value. The learned Advocate, further, submitted that the issue stands decided by the Supreme Court in the case of Escorts JCB Ltd. v. CCE, 2002 (146) ELT 31 (SC) wherein it has been held that the ownership property has no relevance in so far as insurance of goods sold, during transit, is concerned and that the view that the ownership in the property continues to be retained by the assessee till it is delivered to the buyer for the reason that the assessee has arranged for the transport and the transit insurance, is not sustainable; that the Tribunal also, in their own case vide Final Order No. 500/04-NB dated 26.5.2004, has allowed their appeal on this point.

2. The learned Advocate mentioned that Modvat Credit has been disallowed to them on the ground that they had sent inputs to the job worker, who has paid the duty which was not required to be paid by the job worker under Notification No. 214/86-CE; that the Tribunal vide Final Order dated 26.5.04 has also allowed their appeal in this regard by following the decision of the Tribunal in the case of CCE, Chandigarh, v. Ranbaxy Labs. Ltd., 2004 (60) RLT 127.

3. Smt. Krishna A. Mishra, learned SDR, submitted that the job worker had paid duty only in respect of inputs used by him in process the goods received from the appellants. He had not included the value of the inputs received by him from the appellants; that, accordingly, the payment of duty by the job worker was not appropriate payment of which credit cannot be taken up the appellants.

4. We have considered the submissions of both the sides. We observe that on both issues, involved in the present appeal, the Tribunal vide Final Order No. 500/04 dated 26.5.2004, has already allowed the appeal filed by the appellants. As far as the issue relating to the inclusion of freight and insurance charges in the assessable value of the goods cleared from the factory is concerned, the matter also stands settled by the Supreme Court in the case of CCE v. Escorts JCB Ltd. (supra).

Following the ratio of the said decision, we hold that the freight and insurance charges in the present matter are not included in the assessable value of the products manufactured and cleared by the appellants. As far as issue regarding taking of Modvat Credit is concerned, we observe that it is not the case of the Revenue that the job worker has not paid the duty or the appellants have taken the Modvat Credit of more duty than what was paid by the job worker. Once the job worker has paid the duty and duty paying documents accompanied the goods and the appellants have taken the Modvat Credit on the basis of duty-paying documents, no fault can lie at their end. If the job worker has not paid the appropriate duty, the matter has to be taken at the job worker's end for demanding the Central Excise duty, if any, payable by him. The Tribunal also in the case of Ranbaxy Labs. Ltd. (supra), has held that "once the goods have suffered duty of excise, the provisions relating to the Modvat Credit permit the manufacturer to

avail of the credit of duty if the goods are used in or in relation to the manufacture of dutiable goods". In view of this, we hold that the appellants are eligible to take Modvat Credit of the duty paid by the job worker. Accordingly, we set aside the impugned order and allow the appeal.

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