Birla Copper Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-04-2004

Reported in : (2004)(117)LC1103Tri(Delhi)

Judge : S Kang, Vice, M T K.C.

Appellant : Birla Copper

Respondent : Cce

Judgement :

2. The appellant filed this appeal against adjudication order passed by the Commissioner of Central Excise.

3. The brief fats of the case are that the appellants are engaged in the manufacture of Copper Cathodes. The appellants were availing the benefit of CENVAT credit in respect of input used in their final product. The main raw material for the manufacture of their final product is Copper Concentrate. The appellant were clearing their final products i.e. Copper Cathodes on payment of duty and during manufacture of the final product one by-product comes into existence that is the "Sulphuric Acid". The appellant were clearing the Sulphuric Acid on payment of duty as well as under Chapter X procedure provided under Notification No. 6/2002 to the fertilizer manufacturer. The Revenue is demanding amount equal to 8% of the value of the Sulphuric Acid cleared to the fertilizers manufactures under Chapter X procedure.

4. The contention of the appellant is that the Revenue is admitting this fact that Sulphuric Acid is by-product, which comes into existence during the manufacture of their final product. The final product is cleared on payment of duty. In view of this admitted fact that Sulphuric Act is by product an amount equal to 8% of the value of the goods cleared under Chapter X procedure to the fertiliser manufacturer cannot be demanded. The appellant relied upon the decision of the Tribunal in the case of Sterlite Industries (India) Ltd. v. CCB reported in 2004 (63) RLT 841.

5. The contention of the appellant is also that the Sulphuric Act is cleared under Chapter X procedure to the fertilizers manufacturers, therefore, it cannot be said that the sulphuric Acid exempt from payment of duty and the appellant relied upon the decision of the Tribunal in the case of Aureola Chemicals Ltd. v. CCB reported in 2004 (62) RLT 967 : 2004 (115) ECR 198 (T).

6. The contention of the Revenue is also that the appellant were clearing Sulphuric Acid to the fetilizer manufacturers without payment of duty, therefore, as per the provisions of Rule 6(2) of Cenvat credit rules they are required to pay 8% of the value of the goods viz.

Sulphuric Acid cleared to the fertilizer manufacturers.

7. In this case, the Revenue is not disputing the fact that Sulphuric Act is by-product emerging in the manufacture of final product by the appellant. It is also not disputed that final product is cleared on payment of duty. The only dispute is in respect of the Sulphuric Acid which is, by product, cleared to the fertilizer manufacturer under Chapter X, procedure under Notification No. 6/2002. We find that this issue is squarely covered by the Tribunal's decision in the case of Sterlite Industries (supra). In this case the Tribunal after taking into consideration the provisions of CENVAT rules held that the Revenue cannot demand amount equal to 8% of the value of the Sulphuric Act, which is by-product, cleared to fertilizer manufacturer. In view of the above decision of the Tribunal the demand is not sustainable hence set aside. The appeal is allowed.