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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-07-2005

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

Appellant : Swaraj Mazda Ltd.

Respondent : Cce

Judgement :

1. Heard both sides. The appellant filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals). In this case the benefit of Modvat credit was denied to the appellant on the ground that inputs were directly sent to the job worker without receipt in their factory. The contention of the appellant is that they filed necessary intimation under Rule 57F of the Central Excise Rules for sending the inputs for further processing to their job worker. The goods were received under the cover of invoice where the name of the appellant as well as the job worker is mentioned and the goods were directly received by the job worker and after due process, processed inputs were received in the factory of the appellant which was used in the manufacture of the final product which were cleared on payment of duty, therefore, the denial of credit is not sustainable. The appellant relied upon the decision of the Tribunal in the case of Kinetic Honda Motor Ltd. v. CCE, Indore and theMaruti Udyog Ltd. v. CCE .

2. The contention of the revenue is that they adopted their own procedure. On receipt of the goods, the job worker prepares the challans under Rule 57F of Central Excise Rules and the appellant reversed 10% of the credit in respect of the

inputs which were sent for job work. The contention is that as the appellants were reversing credit of 10%, therefore, the goods are entered in the factory of the appellant and without this they cannot reverse the credit.

3. We find that in this case the appellants were taking credit in respect of the inputs which were directly sent to the job worker. There is no dispute regarding the payment of duty. In respect of the inputs after necessary process, the inputs were received in the factory of the appellant. The only objection of the revenue is that the inputs were not received in the factory before sending the same to the job worker.

We find that this issue is already covered by the decision of Kinetic Honda Motor Ltd. (supra) wherein it has been held The thrust of the lower authority's finding is that the appellants could have sent the input directly from the supplier to the job worker and received the ' matter conversion from the job worker under Rule 57F(2) only after complying with the procedure laid down for the purpose pursuant to the enabling Notification No. 350/86.

Since they have failed to do so, it has been held that Modvat credit has to be denied. However, the fact remains that the appellants have been granted permission for the facility under Rule 57F(2) earlier and they had also issued the challans to the job worker as envisaged thereunder. Moreover, the input has been sent directly by the supplier to the job worker with endorsement, A/c Kinetic Honda Motor Ltd., Pithampur made in the related Gate Pass against the column "name and address of consignee". Also, there is no dispute regarding the duty-paid nature of the inputs and of their use in the manufacture of the final product. In such a context, the mere fact that the appellants failed to adhere strictly to the modified procedure for sending the input directly to the job worker under Rule 57F(2), should not come in the way of extending Modvat credit benefit to the inputs. It is seen that in the case of CCE v. Roshan Tin Printers , the supplier of raw material on his own and without any permission Under Rule 57F(2) had sent it for conversion to job worker whereafter only the input was received by the manufacturer. It was argued before the Tribunal that it was a serious lapse for a manufacturer, who is otherwise familiar with the requirement prescribed for the purpose under Rule 57F(2). But the contention did not find acceptance with the Tribunal which held that the requirement of permission under Rule 57F(2) is but a procedural requirement meant for establishing proper correlation with the duty-paid inputs initially received till they go into the final product. So long as there is no dispute, observed the Tribunal, that the duty-paid material received by the suppliers have come to the hands of the user manufacture after some processing, the procedural non-compliance cannot be held against the user manufacturer for denying the substantive benefit of Modvat credit.

4. The Large Bench of this Tribunal in the case of Maruti Udyog Ltd. (supra) had also taken the same. Larger Bench of the Tribunal held that This view is strengthen by the decision of the Tribunal in the case of Kinetic Honda Motor Ltd., supra, wherein the Tribunal held, relying upon the decision in the case of CCE v. Roshan Tin Printer 1994 (&4) ELT 325, that as there is no dispute that the duty paid material received by the supplier have come to the hands of the user manufacturer for denying the substantive benefit of Modvat credit.

It has also been held by the Supreme Court in the case of Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner 1995 (55) ELT 437, that "there are conditions and conditions. Some may be substantive considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purpose they were entitled to serve. A distinction between the provision of statute which are of substantive character and were built in with certain specific objective and policy on one hand and those which are procedural and technical in their nature on the other must be kept clearly distinguished.

5. In view of the above decisions, we find that denial of credit only on the ground that inputs were not received in the factory of the appellant is not sustainable. The impugned order is set aside and the appeal is allowed.