

Commissioner of Central Excise Vs. R.F.H. Metal Castings (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-2005

Reported in : (2005)(101)ECC285

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : R.F.H. Metal Castings (P) Ltd.

Judgement :

1. Both, Revenue and M/s. R.F.H. Metal Castings (P) Ltd., have filed one appeal each against the common Order-in-Appeal No. 173/2004, dated 19-4-2004.

2. Shri Pankaj Malik, learned Chartered Accountant, submitted that the assessee manufactures Electronic Energy Meter and avail of the MODVAT Credit of the duty paid on inputs; that one of the inputs received by them is M.S. steel tubes; that the said tubes are reduced and then cut to required sizes and subjected to the process of debarring and smoothing of edges and surfaces and, thereafter, the process of electro plating is carried out; that after carrying out all these processes, the tubes are exported to foreign country; that the Department has denied the MODVAT Credit taken by them in respect of M.S. tubes on the ground that as no manufacturing process has been carried out, they are not eligible to avail of the MODVAT Credit; that the view taken by the Revenue is contrary to the Instructions issued by the Board, vide Circular No. 283/117/1996-C.X., dated 31-12-1996 wherein it has been clarified that the MODVAT Credit in R.G. 23A Pt. II account

against the export of inputs as such under bond can be utilised in the same manner as it is provided for a final product under proviso to Rule 57F(4) of the Central Excise Rules, 1944 and obviously it follows from this that such inputs should be allowed to be exported under bond without any reversal of the credit. Reliance has also been placed by the learned Chartered Accountant on the decision of the Tribunal in the case of Rico Auto Industries Ltd. v. CCE, New Delhi-III; 2003 (57) RLT 653 (CEGAT-Del.) and CCE, Pune v. Dr. Beck & Co. (India) Ltd. - 2000 (116) E.L.T. 627 (T). We also heard Shri D.N. Choudhary, learned SDR.3. It has been held by the Tribunal in the case of Rico Auto Industries Ltd. (supra) that MODVAT Credit cannot be disallowed in terms of proviso to Rule 57F of the Central Excise Rules which provided that inputs may be removed for home consumption or for export under bond. As in the present matter the inputs have been removed under bond under Rule 13 of the Central Excise Rules, the Modvat credit taken by the assessee can be used in the manner as provided under Rule 57F(4) of the Central Excise Rules, 1944. This has also been clarified by the Board vide Circular No. 283/117/1996-C.X., dated 31-12-1996. Thus, following the Board's Circular and the decision of the Tribunal, the appeal, filed by the assessee, is allowed.

4. The learned SDR submitted that the assessee had received the goods manufactured by them back from their customers for the purpose of reprocessing the same; that the assessee had taken CENVAT Credit of the duty initially paid by them at the time of clearance of those goods; that, subsequently, these products had been cleared by the assessee as scrap and the payment of duty had been made on the reduced value of the scrap; that, as per the provisions of Rule 16(2) of the CENVAT Rules, 2002 if the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the Cenvat credit taken under Sub-rule (1) of Rule 16; that the Commissioner (Appeals), in the impugned Order, has wrongly allowed the assessee to pay the duty only as scrap; that as the returned goods have been cleared by applying the process which do not amount manufacture, the entire Cenvat credit has to be reversed in terms of the provisions of Rule 16(2) of the Cenvat Credit Rules, 2002.

The learned Chartered Accountant, on the other hand, submitted that during the course of being repaired/re-processed, the returned goods got damaged to such an extent that the same cannot be used for the purpose for which these have been originally manufactured; that, therefore, these goods had been converted into scrap and sold as scrap; that the scrap is a commodity distinctly different from duty paid goods and, therefore, provisions of Sub-rule (2) of Rule 16 the Central Credit Rules, 2002 will not apply.

5. We do not find any substance in the submissions of the learned Chartered Accountant. Rule 16(1) provides that where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall be entitled to take the CENVAT Credit of the duty paid as if such goods are received as inputs. Sub-rule (2), further, provides that if the processes to which the goods are subjected before being removed does not amount to manufacture, the assessee shall pay the amount equal to the CENVAT Credit taken under Sub-rule (1). It is not in dispute that the processes undertaken by the assessee did not amount to manufacture. The fact that the scrap is different from goods does not mean that the scrap has occurred as a result of manufacturing process. No one undertakes the process of manufacture to make the scrap. We, therefore, do not agree with the findings of the Commissioner (Appeals) in this regard and set aside the same and hold that assessee is liable to reverse the entire credit taken by them at the time of receipt of the returned goods.

6. The learned SDR has also mentioned that the assessee had also availed of the CENVAT Credit on the strength of invoice No. 114, dated 29-9-2001 in which description of the goods was shown as "dismantling and re-erection including consumable"; that this shows that no new goods were received by the assessee on which the credit can be availed of; that labour charges are not subject-matter under the Central Excise law independently. The learned SDR relied upon the decision in the case of CCE, Bangalore v. NTTF Industries Ltd. - 2004 (169) E.L.T. 92 (T) wherein it has been held that design and development charges are not excisable goods and no Central Excise duty is payable and MODVAT Credit is not allowable; that, thus, the reliance by the learned Commissioner (Appeals) on the

decision of the CCE, Bangalore v. Vikrant Tyres Ltd. -2003 (161) E.L.T. 674 (T) which is a decision by the Single Member Bench, is not correct. On the other hand, the learned Chartered Accountant, submitted that the assessee had purchased conveyor and powder coating plant; that the Purchase Order includes the work of erection and commissioning; that the plant after erection needed modification which could be carried out only after dismantling of the plant and re-erection thereof by the supplier; that the supplier had also used some consumables in the repair of the plant; that as supplier paid the Central Excise duty, the MODVAT Credit cannot be denied to them; that the Central Excise Department cannot change the assessment at the assessee's end. The learned Chartered Accountant relied upon the decision in the case of Eveready Industries India Ltd. v. CCE, Allahabad, 2000 (123) E.L.T. 1171 (T) wherein it has been held that taking of MODVAT Credit at the time of receipt of goods is permissible to the extent specified in duty paying documents.

7. After considering the submissions of both sides, we find force in the submissions of the learned SDR that as no goods have been received by the assessee, the question of availing of Modvat credit does not arise. The Modvat credit is available either on the inputs or on the capital goods. The charges paid towards erection of the plant and dismantling are neither inputs nor capital goods. In the case of Eveready Industries India Ltd. v. CCE, Allahabad (supra), the goods were received by the assessee and the issue involved was whether packing or forwarding charges should have been included in the assessable value of the inputs. In the present matter, as observed by us, no goods have been received. Further, the Division Bench of the Tribunal has held in NTTF Industries Ltd. (supra) that no duty is required to be paid on design and development charges nor the charges are excisable goods and, therefore, the question of allowing the Modvat credit of duty paid on such charges does not arise. Accordingly, we set aside the impugned Order in respect of allowing the Modvat credit on dismantling and erection charges.

8. The learned Chartered Accountant has also submitted that the penalty imposed by the Adjudicating Authority is on the higher side. We agree with the learned Chartered Accountant that it is not a fit case for imposing the penalty equal to the

amount of Modvat credit involved. The penalty is certainly imposable on the assessee as they had wrongly taken the Modvat credit. The penalty of Rs. 20,000/- will meet the ends of justice. We impose a penalty of Rs. 20,000/- on the assessee. Both the appeals are disposed of in the manner indicated above.

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