Mahindra and Mahindra Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-18-2005

Reported in : (2005)(186)ELT216Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Mahindra and Mahindra

Respondent : Commissioner of Central Excise

Judgement :

1.1 Appellants are an assessee manufacturing and clearing "Tractors" falling under chapter heading 8701 of the Central Excise Tariff.

Tractors are exempt from duty vide notification 23/2004 CE dated 8.07.2004. They also manufacture "Tractor Skids" falling under heading 8.07.2008, IC Engines under heading 8.04.2008, Transmission Assembly under 8.04.1983 & parts thereof which are chargeable to duty when cleared from the factory.

1.2 They avail credit of duty paid on inputs procured to manufacture the finished products. The inputs are common in use to both Tractors' which are cleared as Tractors and as parts are cleared on payment of duty. The appellants are not able to identity the inputs at the stage of their receipts as to the final destination of actual use in the appellants premises /manufacturing plant. They approached the jurisdictional officers vide letters dated 14.07.2004 with a procedure as declared by them in that letter vide letter dated 21.7.2004. They also informed about that availing CENVAT credit in respect of inputs received and an amount of 8% of the sale value of the Tractor cleared reversed under the provisions of Rule 6(3) b of the Rules would be reversed on amounts equivalent to the credit availed on inputs per Tractor and also requested for deductions on account of Sales Tax and other taxes from total price of Tractors to arrive at 8% reversed amount on price of Tractors.

1.3 The Dy. Commissioner informed under letter dated 27.02.2004 to follow Rule 6 of the CENVAT credit Rules 2002. They gave a detailed interpretation of their understanding of Rule 6(3)(b) & Rule 6(5) (vi) vide letter dated 31.07.204 to the Commissioner of Central Excise, Mumbai and followed it up with a letter dated 4.08.2004.

1.4 The Jt. Commissioner vide his letter dated 11.08.2004 directed the appellants not to take credit on inputs which are exclusively used for the manufacture of "Tractors" and that they may take credit on common inputs and reverse 8% of the price of exempted goods as per Rule 6(3) (b) and directed their deductions of taxes from the price was not admissible.

1.5 The above direction communicated by Jt. Commissioner were with the approval of Commissioner of Central Excise, Mumbai.

1.6 Hence this appeal against letter dated 11.08.2004 of Jt.

Commissioner.

2.1 The appeal was heard. Lot of interesting and learned plea were made by both sides on the interpretation of Rule 6b, the levy of Education Cess under Finance Act and Catena of decision were relied upon. The Ld.

DR. is in the last sentence of the written submission stressed with a plea as follows- "...........Appellants were requested by a letter to comply with CENVAT rules. Appellant has taken this letter as appellable order.

We, therefore, respectfully plead that all the three pleas taken by the appellant be rejected".

2.2 We have purused the letter dated 11.08.2004 from the Jt.

Commissioner to the assessee issued with the approval of commissioner, against which the present appeal is being vigorously purused. This letter dated 11.08.2004 reads as - "In the said letter you have mentioned at Para No. 1 that you are availing Cenvat Credit on all inputs which has borne excise duty and which are used in the dutiable and exempted final products. In this connection your attention is invited to Sub-rule (1) of Rule 6 of Cenvat Credit Rules, 2002 which states that Cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacturer of exempted goods except in the circumstances mentioned in Sub-rule (2). Thus the credit on inputs (uncommon inputs) which are exclusively used for manufacture of tractor is not available as tractors are exempted from payment of duty. You are therefore requested not to take credit on such uncommon inputs. You may take credit of duty on common inputs which are used for manufacture of dutiable and exempted goods and reverse 8% of the price of exempted goods as per Rule 6(3)(b). In your earlier letter F.No. TD/C.Ex./Clearance /04-05 dated 14.07.2004 addressed to D.C., Malad Dn., you have stated that presently you are availing credit on all inputs received and will be reversing the credit availed on all the uncommon parts which had gone in the exempted final product (tractors) cleared under exemption. In case you are finding any difficulty in adopting this procedure, you may exercise your option for maintaining separate account in terms of Rule 6 (2) of the said rule.

As regards to Para No. 2 of your letter dated 04.08.04, you have stated that you will be paying an amount to 8% of the total price after taking deduction of Sales Tax and the payment of 8% as per Rule 6(3)(b). The said rules clearly states that the deduction is allowed only in respect of Sales Tax and other taxes. Deduction of 8% as per Rule 6(3) (b) is not a tax but it is a reversal of inputs credit. Therefore, such deductions from the total price is not admissible." and find it cannot be considered as an order in adjudication passed by a Commissioner. No doubt the directions of the Jt. Commissioner have the approval of the Commissioner yet it is not more than an order of a Commissioner at the best.

2.3 An appeal under Section 35B of the Central Excise Act, 1944 be entertained against an order of a Commissioner as an adjudicating authority. In this case the Commissioner has applied his mind but not acted as such. Commissioner disposal of a representation made even in term of an Allahabad High Court Order was not held to be a speaking order. Appellant was given liberty to approach jurisdictional commissioner to pass on applicable speaking order and the appeal filed was dismissed in the case of L. Kant Paper Mills [2002 (139) ELT 412 Trib]. The apex court in the case CCE v. M.P. Steel Corporation 2003 (154) ELT 12 SC has held that such communications made of decisions by Collector and thereafter order passed by a Superintendent based on Collectors decision no appeal could be entertained and maintanle in CEGAT. Following this settled position, this present appeal against the order of Commission communicating the approved decision of Commission is required toe be rejected as not maintainable.

3.2 Since important decisions on fiscal liabilities of the assessee, are being arrived by the interpretation by the Commissioner, it would be in the interest of natural justice that before deciding the issue the Commissioner should have granted a hearing to the assessee on his representation and thereafter passed a speaking order. Since the issue is of recurring nature, it would be in interest of Revenue and the assessee that Commissioner should be directed to hear the appellant in the matter and thereafter issue a speaking order. We would direct the same and fix a time frame for compliance within 2 months of receipt of this order.