

Recron Synthetics Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-30-2005

Reported in : (2005)(179)ELT150TriDel

Judge : S Kang, Vice

Appellant : Recron Synthetics Ltd.

Respondent : Cce

Judgement :

2. The appellant filed this appeal against order-in-appeal passed by the Commissioner (Appeals) whereby Modvat credit in respect of the capital goods was denied on the ground that the capital goods were sold to the finance company. Therefore, the appellants are not entitled to take credit in respect of the duty paid on the capital goods.

3. The contention of the appellant is that the appellant after taking the credit on the capital goods sold the goods to the finance company, therefore, it amounts to removal of the goods. Hence they are liable to pay the duty on such removal of capital goods.

4. The contention is that the goods were installed in the factory and thereafter they were sold to the finance company to recover the cost of the capital goods and the goods were taken on lease from the finance company. The contention of the appellant is that vide Notification No.27/94-CE(NT) dated 17.6.1994, the Revenue

allowed the credit in respect of the capital goods which are on lease, hire-purchase or loan agreement from the finance company. The appellant relied upon the following decisions of the Tribunal viz.:Associated Cement Companies Ltd. v. CCE reported in 2004 (64) RLT 153 : 2004 (117) ECR 113 (T).Whirlpool of India Ltd. v. CC, New Delhi reported in 2003 (58) RLT 241 : 2003 (111) ECR 851 (T) The contention of the appellant in the above decisions of the Tribunal it was held that when the goods were not removed from the factory, the credit cannot be denied evening the case of sale of the factory.

5. The contention of the Revenue is that the appellant after taking the credit sold the capital goods, therefore, the ownership of the capital goods were not with the appellant and as per Rule 57R(3) of Central Excise Rules, the credit cannot be taken on capital goods which are acquired by a manufacturer on lease, hire-purchase. The contention is that when the goods were sold to the finance company, therefore, the finance company is the owner of the goods. Therefore, the demand was rightly made.

6. In this case the dispute is regarding credit on capital goods imported by the appellant and installed in the factory and the appellant availed Modvat credit in respect of the duty paid on the capital goods. Subsequently, they entered into an agreement with the finance company to recover the cost of the goods the title of the goods transferred in the name of the finance company and the finance company take credit leased the goods to appellant. I find that Notification No.27/94-CE dated 17.6.1994 allowed the Modvat credit in respect of the capital goods which are acquired on lease, hire-purchase or loan agreement from the finance company. It is not disputed by the Revenue that the capital goods were physically not removed from the factory.

The capital goods remained in the factory and are used in the manufacture of final product. The finance arrangement is made to recover the cost of the capital goods. In view of the above discussion, the impugned order is set aside and the appeal is allowed.