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Commissioner of Central Excise Vs. Indus theco Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-20-2005

Judge : A Wadhwa, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : indus theco Pvt. Ltd.

Judgement :

1. This is a Revenue's appeal against the order of the Commissioner of Central Excise (Appeals). In the impugned order, the Commissioner (Appeals) set aside the order of the lower authority. The issue involved is whether the imported compressors brought into the respondent's premises and cleared therefrom have undergone any process of manufacture resulting in the production of excisable goods on which duty is paid. It is an admitted position that the respondent credits himself with CVD paid at the time of clearance of the imported compressors as modvat credit. He subjects the compressors to the following processes:- (a) Cutting the lugs of the compressors so as to suit the vehicles for Indian road conditions as to due to vibration in diesel cars, the compressors touch the body.

(c) Flywheels were balanced and oil was added in the compressors for lubrication to make the same suitable for use.

(e) Each compressor was men filled with brackets to make them ready for use/fitting.

2. It is the respondent's contention that the imported compressors cannot be used as such unless these processes are undertaken and the processes themselves bring into existence compressors which can be used and therefore there is a process of manufacture involved. The Revenue's contention however is that the compressors have not undergone any process of manufacture and have been removed as such, in which case whatever credit that has been taken should have been reversed with the compressors were removed. The second contention is mat since there is no process of manufacture, the final goods are not dutiable.

3. None for the respondent. Heard the learned DR and perused the records.

4. On the issue whether the processes undertaken by the respondent amounted to manufacture or not, we observe that except testing of voltage and magnetic coils, the processes undertaken by the respondent do constitute process of manufacture. Further, the respondent has been filing classification list in which he has mentioned compressors, as the final product has been discharging duty leviable thereon. The department also has been collecting duty on the final products, i.e.

compressors. They cannot now turn round and say that the final products are not result of manufacture of goods. Insofar as the second contention mat the goods were removed as such and therefore the credit taken initially should have been reversed, we observe that the inputs have not been removed as such but have been removed only after certain processes of manufacture have been taken.

5. In view of this discussion, we do not see any infirmity in the order of the Commissioner (Appeals). We uphold it accordingly and reject the Revenue's appeal.

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