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Eicher Tractors Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-26-2005

Judge : S Kang, Vice-, N T C.N.B., M Ravindran

Appellant : Eicher Tractors

Respondent : Cce

Judgement :

1. In view of the conflicting decision on the issue in respect of the correct valuation of the Capital goods and the inputs on which Cenvat Credit has been availed when removed as such, the issue has been referred to the Larger Bench.

2. The appellants availed the Cenvat Credit on the inputs purchased by them for use in their final products. They removed the inputs by reversing the credit availed on such inputs when removed from their factory.

3. The contention of the appellants is that they are engaged in the manufacture of lC engines and they purchase the duty paid inputs for use in their final products and avail Credit of the duty paid on such inputs as provided under the Cenvat Credit Rules, and at times remove such duty paid inputs from the factory to their marketing division by reversing the credit taken on such inputs. The Revenue objected the reversal of the credit on such inputs on the ground that as per Rule 3 (4) of the Cenvat Credit Rules, on the removal of the inputs the manufacturer shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of removal and on the value determined

for such goods under Section 4 of the Central Excise Act. There is no dispute about the rate of the duty applied but the dispute is limited to the value of the inputs removed by the appellants. The Revenue seeks to levy the duty on the transaction value at the time of removal.

4. The learned Counsel appearing for the appellants submits that the very same issue was in dispute when the new Cenvat Credit Rules were introduced and the Board gave a clarification vide its circular No 6/39/2000-CX, I dated 1.7.2002 which at point No 14 reads as under:14. How will valuation be done when Where inputs or capital goods, inputs or capital goods; on on which credit has been taken, which CENVAT credit has been are removed as such on sale, taken, are removed as such from the there should be no problem in factory, under the erstwhile Sub-Rule ascertaining the transaction (1C) of Rule 57AB of the Central value by application of Section Excise Rules, 1944, or under Rule, 4(1)(a) or the Valuation 1944, or under Rule 3(4) of the Cenvat Rules. (provided tariff values Credit Rules, 2001 or 2002? have not been fixed for the inputs or they are not The learned advocate points out that there was one more circular on this specific point vide Circular No.813/10/2005 dated 25.04.2005 which at para no. 2 and the table reads as under: "I am directed to refer to Board's letter No.6/39/2000-CX. I dated 1.7.2002 (2002(143) ELT T-39) clarifying certain points relating to the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2. A number of references seeking further clarification on some of the points clarified in the Circular mentioned in Para 1 above have been received in the Board. These points are being clarified in the table enclosed. These clarifications supercede the clarification given in above referred circular.

5. Receipt of this circular may kindly be acknowledged.Sl. Old Point of Doubt ClarificationNo. Sl.No.1. 13.

How will valuation of samples be In case of free samples, done which are distributed free, the value should bedetermined as part of marketing strategy, under Rule 4 of Central or as gifts or donations? Excise Valuation (Determination of Price2.14.

How will valuation be done when In such situations, inputs or capital goods, on which the provisions of Rule 3 (5) CENVAT credit has been taken, of Cenvat Credit Rules, are removed as such from the 2004 would apply.

factory, under the erstwhile He submits that the issue is covered in their favor in view of the circular dated 25.4.2005.

5. The learned SDR submits that the said circular dated 25.4.2005 was not giving correct picture hence the Board thought it fit to issue further clarification vide circular dated ... which reads as under: "I am directed to refer to Board's Circulars No. 643/34/2002-CX Dated 1.7.2002 (2002 (143) ELT T39) and No.813/10/2005-CX dated 25th April, 2005 (2005 (183) ELT T3) in which clarification was issued on valuation in certain situations, inter alia in respect of valuation of capital goods or inputs removed as such from the factory of the manufacturer. It was clarified that in such situations, the provisions of Rule 3(5) of CENVAT Credit Rules, 2004 shall apply.

2. Consequent to that, a point has been raised as to whether the provisions of Rule 3(5) of CENVAT Credit Rules, 2004 shall apply to situations when the provisions of Sub-rule (1C) of Rule 57-AB of Central Excise Rules, 1944, or Rule 3(4) of CENVAT Credit Rules, 2001 or Rule 3(4) of CENVAT Credit Rules, 2002 were in force.

3. The matter has been examined. As per Sub-rule (1C) of Rule 57AB of Central Excise Rules, 1944, or Rule 3(4) of CENVAT Credit Rules, 2001 or Rules 3(4) of CENVAT Credit Rules, 2002 upto 28.2.2003, in case of manufacturer removes inputs or capital goods as such, he was required to pay an amount equal to the duty of excise leviable on such goods at the rate applicable on the date of such removal and on the value determined under Section 4 or Section 4A, as the case may be. As per Notification No.13/2003-CE(NT) dated 1.3.2003 Rule 3(4) of CENVAT Credit Rules, 2002 was amended to provide that in such situations, the manufacturer shall pay an amount equal to the credit availed in respect of such inputs or capital goods. This position remains unchanged in Rule 3(5) of CENVAT Credit Rules, 2004.

4. It was in this context that the clarification was issued vide Circular No. 813/10/2005-CX dated 25th April, 2005 to say that in case, the inputs or capital goods are removed as such, the provisions of Rule 3(5) of CENVAT Credit Rules, 2004 shall be applicable. The situation prior to 1.3.2003 (when Rule 57-AB(1C) of Central Excise Rules, 1944, or Rule 3(4) of CENVAT Credit Rules, 2001 or unamended Rule 3(4) of CENVAT Credit Rules, 2002 was in force) shall continue to be governed by the provisions as in force at the relevant time.

He submits that in view of the clarification the revenue was right in demanding the duty on the Transaction Value of the inputs cleared as such.

6. It is seen that the Board vide its circular dated 25.4.2005 has categorically said that clarifications given in this Circular supercede the earlier Circular dated 1.7.2002. The revenue cannot argue against its own Circular, when the Board has stated that the provisions of the Rule 3 (5) of the Cenvat Credit Rules, 2004 would apply in respect of the Capital goods and inputs on which credit has been availed are removed as such. We may reproduce the said Rule 3(5) of the Cenvat Credit Rules, 2004 which reads as under: "3(5). When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9." 7. In view of the said clarification and the provisions of the Rule 3(5) of the Cenvat Credit Rules, 2004, we hold that the reference has to be answered in favour of the appellants. Since no other issue arises in the said matter, the appeal is allowed.

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