Commissioner of Central Excise Vs. Tudor (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-19-2005

Reported in : (2006)(105)ECC471

Judge : K Kumar, S T Chittaranjan

Appellant : Commissioner of Central Excise

Respondent : Tudor (i) Ltd.

Judgement :

1. Heard the learned D.R. None appeared for the respondents. We have taken on record the written submissions filed by the respondents. The lower appellate authority has held repair/remaking of rejected batteries to be covered under Rule 173H of the Central Excise Rules, 1944, holding that the same does not amount to manufacture.

2. The facts in brief are that the appellants are manufacturing Electric Accumulator (Automobile Batteries) falling under Heading No.85.07 of the Schedule to the Central Excise Tariff Act and are availing of modvat/cenvat facility. They are bringing defective Automobile Batteries into the factory during the guarantee/warranty period under Rule 173H for remaking. The batteries are cut open and the same are sent for separation of lead and plastic box. The reprocessing of defective/damaged batteries involves the process of re-melting of the cut-open plastic box and refining the lead. The same refined lead is used in a continuous process of manufacturing of new batteries with distinct new serial

number.

3. Provision of Rule 173H of the Central Excise Rules, 1944 are as follows : Retention in, or bringing into, a factory or warehouse, of duty paid goods.- (1) Excepts as hereinafter provided, no excisable goods or parts thereof on which duty has been paid shall be brought into, or retained in, a factory or a warehouse.

(2) An assessee may, subject to such conditions as may be specified by the Collector, retain in, or bring into, his factory or warehouse, excisable goods or parts thereof, accompanied by duty paying documents, if such goods or parts thereof,- (a) are required for use in the manufacture of other goods in the factory; or (b) are required in the factory for construction, repairs or for use as fittings or equipment or for any other purpose for which such goods are normally consumed; or (c) need to be re-made, refined, reconditioned, repaired or subjected to any similar process in the factory; or (d) cannot be transported due to circumstances beyond the assessee's control such as, the suspension of booking on railways, nonavailability of railway wagons or the breakdown of carriers; or (e) are required for test or for study of designs or methods of construction: Provided that where such goods or parts thereof are required to be brought into the factory or warehouse of an assessee for any of the purposes specified in Clause (c), such goods or parts thereof shall be brought into such factory or warehouse within a period of one year from the date of their initial removal from the factory or warehouse or within the period of warranty or guarantee provided in respect of such goods by the manufacturer thereof, whichever is more: Provided further that the Collector may, on a representation being made to him in this regard, if he is of opinion that having regard to the circumstances of the (sic)case, it is necessary so to do, by order extend the period specified in the first proviso to such period as he may consider necessary : Provided also that in the case of goods or parts thereof which are not accompanied by duty paying documents, if the Collector is satisfied that the identify of the goods can be established by other collateral evidence, he may by order and subject to such conditions as he may impose, relax the requirement of the production of duty paying documents.

(3) The goods or parts thereof (retained in, or brought into, a factory or a warehouse in accordance with the provisions of Sub-rule (2) may, if not subjected to any process amounting to manufacture, be removed from the factory or warehouse without payment of duty subject to such conditions as may be specified by the Collector.

4. We find that Rule 173H allows the appellants to receive batteries to be re-made/repaired within a period of one year or within the period of warranty. However, removal of such goods after repair/remaking without payment of duty is conditional upon such process of repairs/remaking not amounting to manufacture as provided under Sub-rule (3) of the said Rule 173H. After considering the process of remaking of new batteries from the defective/damaged batteries we are of the view that such remaking amounts to manufacturing. Our view is supported by the following decisions:Tecumseh Products India Ltd. v. C.C.E., Hyderabad 2004 (167) E.L.T. 498 (S.C.) - Repairing of defective compressors by replacing stators - Job workers carried out winding of such stators which were not ready for use in compressor as such and subjected by appellants to processes of shaping varnishing and backing to fit into compressor housing - Appellants carried out full range or processes for bringing into existence 'stator' as carried out in case of manufacture of stator out of new stack of laminations - To the extent of stator being made ready for using in repairing of compressor, activity amounts to manufacture The review petition against this decision has also been dismissed by the Hon'ble Supreme Court vide 2005 (179) E.L.T. A151.

(2) DSM Anti-infective India (P.) Ltd, v. C.C.E., Chandigarh Reprocessing whether manufacture - Product not found fit for use by customer and sent for reprocessing -Processes undertaken by appellant to make the product fit for consumption and therefore, marketable amounts to manufacture.

Vehicles suffering heavy damage during transit brought back to factory, vehicles completely dismantled and only good parts salvaged - New motor vehicles assembled with the help of both new components and salvaged parts - Process undertaken by appellants amounts to 'manufacture' of a new motor vehicle and not 'repair' - Rule 173H of erstwhile Central Excise Rules, 1944 not applicable -

Appellants free to claim benefit of Rule 173L ibid.

5. As such, we are of the view that the appellants are not eligible for duty free clearance of remade batteries under Rule 173H. Accordingly, we set aside the impugned order in appeal and restore the order in original.