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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-1988

Reported in : (1988)(16)ECC58

Appellant : Collector of Central Excise

Respondent : Gwalior Rayon Silk Mfg. (Wvg.) Co.

Judgement :

1. This is an appeal by the Revenue against the order of Collector of Central Excise (Appeals), New Delhi. Brief facts of the case are that the respondents M/s. Gwalior Rayon Silk Manufacturing Company manufacture Caustic Soda and utilize Titanium Substrate insoluble Anodes in the Electrolytic Cells in which the Electrolysis of Sodium Chloride takes place. These Electrodes are purchased by the respondents and duty under Tariff Item 68 was charged thereon. The respondents were refused permission to avail of the credit of the duty paid on these electrodes by way of set off in terms of Notification No. 201/79 by the Asstt. Collector for the reason that since these electrodes were part of the Electrolytic cells and equipment used in the manufacture of the Caustic Soda, the benefit of the notification could not be allowed. The Collector (Appeals) however, took note of the fact that Notification No. 201 of 79-CE extended the benefit of the set off in respect of Item 68. goods used in the manufacture of any finished excisable goods subject to the other conditions of the Notification and absorb the wording of the notification was wide enough to cover these goods, within the ambit of the notification and that the appellants were entitled to the benefit of the notification as

claimed. The Revenue have urged the following grounds in the appeal :-
"Notification No. 201/79-C.E., dated 4-6-1979 issued under Rule 8(1) of Central Excises and Salt Act, 1944, exempted all excisable goods (hereinafter referred as the "said goods") on which the duty of excise is leviable and in the manufacture of which any goods falling under T.I. 68 of the first Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as "the inputs") have been used from so much of duty of excise leviable thereon as equivalent to the duty of excise already paid on the inputs. It would be seen from the contents of the notification that all excisable goods are exempted (referred to as in said goods) on which duty of excise leviable and in the manufacture of which any goods falling under T.I. 68 (referred to as inputs) have been used, from so much of excise duty leviable thereon as is equivalent to the duty of excise already paid on the inputs.

The notification refers to the goods falling under T.I. 68 should have been used as 'inputs' in manufacture of excisable goods (said goods). Terminology input means a commodity which is put into or used in the manufacture of excisable goods i.e. the said goods. In the instant case, the excisable goods manufactured is Caustic Soda.

The Titanium Substrate Insoluble Anode though an item falling under T.I. 68 is not used in the manufacture of excisable goods, i.e.

caustic soda but used as a part of electrolytic cells which is an ultimate part of caustic soda plant and does not form part of excisable goods i.e. the said goods, as such the same cannot be termed as input for the manufacture of excisable goods i.e. caustic soda. Thus it would be seen that Titanium Substrate Insoluble Anode, is not entitled to the benefit of set-off under Notification No. 201/79-C.E., dated 4-6-1979, not being input as held by Collector (Appeals) in the instant case.

Further, it would be worth noting that Notification No. 201/79, dated 4-6-1979 is basically an exemption notification which exempts finished excisable goods from so much of the duty as is already paid on the T.I. 68 goods used in the manufacture of finished goods.

Thus, it is not merely a set-off Notification but an exemption notification, which exempts duty payable on the finished excisable goods. In view of this it is not proper and legal to allow credit of duty paid on Titanium Substrate Insoluble Anode which are used in the Machinery and Plant used for the Machinery and equipment used in the manufacture of excisable product i.e. caustic soda.

In view of the above reference to amendment of Notification No. 201/79-C.E., dated 4-6-1979 by Notification No. 105/82-C.E., dated 28-2-1982 makes the intention behind the exemption all the more clear that the input should have been used as raw material as component part i.e. input. As such unless the T.I. 68 goods are used as input of the finished excisable goods the exemption was not available even prior to the amendment dated 28-2-1982." 2. The learned departmental representative adopted the reasoning given in the Grounds of Appeal and pleaded that the Electrodes in respect of which set-off duty has been claimed by the respondents are a part of the equipment i.e. Electrolytic Cell and each electrode has a life of 8-12 months. He pleaded that the benefit of Notification 201/79 was not available to the parts of the equipment and could be extended only in respect of such of those items as are in the nature of raw materials going into the stream of manufacture. The learned advocate for the respondents Shri R.C. Desai pleaded that the electrodes were a consumable item and have a surface coating which gets worn out in 8-10 months. He pleaded that there are number of decisions of this Tribunal and the Supreme Court where it has been held that the words 'used in the manufacture of as used in the Notification 201/79 have a wider connotation and would cover even the goods which are not in the nature of raw materials but have nexus with the production of the goods. He pleaded that the Electrodes played a vital role in the manufacture of the goods. He cited the following Case Law in support of his pleas.

(i) 1986 (25) ELT 295, (ii) AIR 1965 SC 891, (iii) AIR 1965 SC 1310, (iv) 1984 (17) ELT 497 and (v) 1985 (19) ELT 166.

3. We observe that this Tribunal in a number of cases has held that for an item to be entitled to the benefit of set-off, the input used need not be in the nature of a raw material which directly goes into the making of the end product - in the case of

Central Excise, Nagpur v. Ballarpur Industries Ltd., Chandrapur 1983 ELT 1263. This Tribunal has held that Sodium Sulphate, one of the chemicals which was utilised for the manufacture of the paper even though it was used for the manufacture of pulp from which paper was produced, the same was eligible for the benefit of the set-off to be given. In the case of Hindustan Levers v. Collector of Central Excise, Bombay reported in 1985 (19) ELT 96 Tribunal, the Tribunal has held that the term 'inputs' has not been used in the Notification No. 201/79 in the ordinary sense of the term. It is a term of reference to the goods falling under Tariff Item 68 of the Central Excise Tariff used in the manufacture of other excisable goods. The term 'inputs' is one of wide scope and not restricted and narrow in scope. What the notification requires is that the Item 68 goods which are referred to as 'inputs' are used in the manufacture of other excisable goods. In the decision of the Tribunal reported in 1986 (26) ELT 961 - Tribunal in the case of Carbon Industries (P) Ltd. v. Collector of Central Excise, Madras, this Tribunal has held that 'cartons' as packing container would be considered as an input as visualised in Notification 201/79 amended by the Notification No. 105/82 and duty paid on these cartons would be eligible for set-off. The ratio of these decisions show that for Item 68 goods utilised and consumed in this process of manufacture the benefit of Notification 201/79 would be available. The Tribunal in the case of Rockdril (India), Jodhpur v. Collector of Central Excise, Jaipur 1984 (17) ELT 497 have held that graphite moulds used in the manufacture of castings will be eligible for the benefit of set-off duty paid thereon when used in the manufacture of castings.

4. We also observe that the Hon'ble Supreme Court and the Tribunal in its various decisions have interpreted the words 'used in the manufacture of' in a wider sense to mean "such of the goods as are used in relation to the manufacture of the end products specified in the notification. In the case of Rockdril (India), Jodhpur v. Collector of Central Excise, Jaipur have observed as under :- "The Appellate Collector has also taken virtually the same ground but worded it differently saying that in the appellant's case the graphite rods/moulds were used in connection with the manufacture of or for the manufacture of diamond drill bits, but not in the manufacture of the drill bits. It is clear from the process of manufacture that diamond drill bits cannot be manufactured without the use of graphite rods/moulds. The finding of the Appellate Collector has also, therefore, no substance. During

the hearing before us, the Department's representative raised yet one more objection saying that scrap graphite resulting after use of the graphite mould had some economic value and so it could not be said that graphite rods/mpulds had been used up in the process of manufacture. We find no such condition embodied in the exemption notification. It is quite evident from the process of manufacture that after being used, the graphite mould is broken up and cannot be re-used. We, therefore, hold that in terms of the language used in the pre-amended notification, the graphite rods/moulds were used in the manufacture of other dutiable goods." It is not disputed that the electrodes in question participate directly in the manufacturing process as a part of the Electrolytic cell and over a period are consumed in the manufacturing process. No doubt that electrodes do not enter in the spectrum of manufacture as raw materials or participate in the production process as ingredients for the end product; but these participate in the reaction which leads to the production of the intended end product namely the Caustic Soda. In view of the nature of the goods and their nexus with the production process following, the ratio of the earlier decisions of the Tribunal and the observations of Supreme Court in the judgment cited, we hold that the Collector (Appeals) was right in allowing the respondents' appeal for the benefit of Notification 201/79. We, therefore, reject the appeal of the Revenue.

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