

Universal Cables Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-2006

Judge : M Ravindran

Appellant : Universal Cables Ltd.

Respondent : C.C.E.

Judgement :

1. This appeal is directed against the order dt. 3.10.05 wherein the appellants were directed to reverse the Cenvat credit availed on the inputs.

2. The relevant facts that arise for consideration are that the appellants are manufacturer of cables and availed benefit of Cenvat on the inputs. The appellants manufactured their final products and subsequently found that their final products fail in the quality parameters and are unmarketable excisable goods. The appellants made an application for remission of duty on these unmarketable excisable goods. The Office of the Commissioner of Customs & Central Excise, Bhopal vide order dt. 3.10.05 permitted the remission of duty to the appellants and directed them to destroy the finished products by cutting them into pieces subject to conditions. The appellants have no difficulty in adhering to two conditions, the only condition by which the appellant is aggrieved is that the office of the Commissioner has directed the appellant to reverse the Cenvat Credit availed on the inputs contained in the finished goods on which duty remission has been granted. Hence, this appeal.

3. The Ld. Advocate appearing for the appellants submits that the reliance placed by the Commissioner on the Board's circular dt. 1.10.04 is totally misplaced, in-as-much as that the said circular was issued considering the factual position in the case of Mafatlal Industries case and is not binding on the appellants. It was also submitted that in this case the finished goods were not lost in fire nor they were insured and the appellants did not get any insurance. It was also submitted that the appellant will be hit from both sides i.e. he has to incur heavy loss due to unmarketable finished goods and further by asking the appellant to reverse the Cenvat credit.

He relies upon the following case law :Electrolux Kelvinator Ltd. v. CCE, Jaipur for the proposition that if the duty is remitted on the finished goods, does not mean that they become exempted, to seek reversal of Cenvat credit on the inputs contained therein.

4. The Ld. D.R. submits that the appellants have sought remission of the duty on the final products, which was granted, and as per the CBEC circular dt. 1.10.04, the appellant is required to reverse the Cenvat credit on the inputs contained in the finished goods on which duty has been remitted. He relies upon the decision in the case of Mafatlal Industries Ltd. v. CCE, Ahmedabad 5. Considered the submissions made by both sides and perused the records. It is not in dispute that the applicant has sought remission of the duty on the finished products which were unmarketable. The duty remission granted to the appellants on the unmarketable finished goods is according to the provisions of Central Excise Rules.

6. The Commissioner while granting the remission of duty, has directed the appellant to reverse the Cenvat credit of duty paid on inputs contained in the finished products based on the CBEC circular No.800/33/2004-CX dt. 1.10.04. The relevant para No.3 of the circular is reproduced below: 3. As per Rule 4(1) of Credit Rules, the credit is taken immediately on receipt of inputs in the factor, Rule 3(3) ibid defines utilization as towards payment of duty on final product etc.

Remission is granted under Rule 21 of the Central Excise Rules, 2002 (for short 'Excise Rules'), when the proper officer is satisfied about the genuineness of the loss of the goods. When the proper officer grants remission and the said decision

is communicated to the assessee, at that point of time the assessee is required to reverse the unintended benefit available, in the form of credit, and till then the credit taken initially continues bona fide. In case the credit is available in the books of accounts which is impracticable, as there is no one-to-one correlation in the Cenvat Scheme, utilization later would fall in category (b) above, hence can be recovered. It does not fall under (a) above, as the credit was taken properly in the first instance. It does not fall under category (c) also, when Rule 12 of credit rules is read with Sections 11A(3) (c) and 11B of the Act. The disputed credit should have been refunded by the proper officer erroneously on an application from the manufacturer under Section 11B *ibid*, which is not the present circumstance.

It can be seen that the circular has been issued based upon the decision of the Tribunal in the case of Mafatlal Industries Ltd. (*supra*). In that case the Tribunal came to the conclusion that reversal of Cenvat of the duty paid on inputs contained in the finished goods lost due to fire is required, as the assessee in that case had been adequately compensated by the insurance company for the loss of finished goods due to fire. This is not the case in the present case before me. In the present case, the appellants have incurred losses due to non-marketable condition of the finished goods, for which they do not have any adequate compensation. To ask them to reverse the Cenvat credit of the duty paid on the inputs will amount to rub salt on the wound.

7. I find that the Tribunal in the case of Inaissa Ltd. (*supra*) has held as follows: In the present case also the final product has not suffered duty only as a result of remission of duty given as fulfilling the conditions, therefore under Rule 49 which is not to be equated to a general exemption from duty on the goods being charged to nil rate of duty.

To my mind the above ratio of the Tribunal's decision squarely applies in the present case, in-as-much as that there is no provision in the Cenvat Credit Rules, 2004 which requires reversal of the Cenvat credit except under certain circumstances. These circumstances are contained in the provisions of Rule 6(1) of the Cenvat Credit Rules, 2004. The said rule is reproduced and they are as under: Rule 6. Obligation of manufacturer of dutiable and exempted goods and

provider of taxable and exempted services. (1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or exempted services, except in the circumstances mentioned in Sub-rule(2).

Provided that the CRN VAT credit on inputs shall not be denied to job worker referred to in Rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in The manufacture of goods cleared without payment of duty under the provisions of that rule.

It can be seen that the Cenvat Credit once availed by the assessee, cannot be asked to be reversed, if otherwise found legal. The illegal credit availed is undoubtedly recoverable under different Rules of the Cenvat Credit Rules, 2004. In the case before me, the Cenvat credit availed by the appellants is not alleged to be wrongly availed. Since, there are no provisions in the Cenvat Credit Rules to reverse the Cenvat credit, when the remission of duty is sought on finished goods, the direction of the Commissioner's office in this regard would amount to denying the legitimate benefit of the appellant.

The Hon'ble Supreme Court in the case of Daiichi Karkaria Ltd. - has at para 17 held as follows: 17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which even it stands cancelled or, if utilized, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw

material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

8. From the above, to my mind the order of the Commissioner's office directing the appellant to reverse the Cenvat credit of duty paid on inputs contained in finished goods on which remission of duty is granted, is without any basis. The said direction is also against the settled law as enumerated above.

9. under circumstances, that portion of the order dt. 3.10.05 which directs the appellants to reverse the Cenvat credit of the duty paid on the inputs contained in finished goods, on which duty of excise has been remitted, is liable to be set aside. The said portion of the order is set aside and appeal allowed.

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