

Escorts Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-14-2006

Judge : S Kang, Vice

Appellant : Escorts Ltd.

Respondent : C.C.E.

Judgement :

1. Heard learned SDR, has none appeared on behalf of the appellant.

Appellant filed appeal against the order in appeal passed by the Commissioner (Appeals).

2. Appellants are engaged in the manufacture of railway equipments and removed inputs for further processing to their job work under Rule 57F of the Central Excise Rules 1944. The goods were removed under 4 Challans after reversing the duty at the rate of 10% under Rule 57F(4) of the Central Excise Rules. The certain goods were received back after processing within 180 days and the appellant availed the credit.

Certain inputs were not received within 180 days. Regarding these inputs, the appellant reversed the whole of the credit. Show cause notice was issued to the appellant for denial of the credit in respect of the inputs, which were removed for job work under 4 Challans on the ground that all the inputs were not received back in full in the factory. The Adjudicating authority confirmed the demand and

imposed the penalty.

3. Commissioner (Appeals) reduced the penalty to Rs. 10, 000/-, otherwise, upheld the demand.

4. The contention of the appellant in the appeal is that as per the provisions of Rule 57F(11) of the Central Excise Rules 1944, if the processed inputs were not received in the factory within specified period, the manufacture shall have to reverse the credit in respect of the processed inputs which are not received back in the factory. The contention is also that as per the provisions of Rule 57F(7) of the Central Excise Rules, 1944 is in respect of the taking credit of duty which were debited under Sub-Rule (6) of Rule 57F of the Central Excise Rules 1944. The contention is that as per the provisions of Rule 57F(11), the inputs credit is to be reversed in respect of the inputs which were not received back in the factory from the job worker within the stipulated period.

5. The contention of the Revenue is that as per the provisions of Sub-Rule 7, in the inputs that were removed for processing are to be received back in full in the factory. As in the present case the goods removed under 4 Challans were not received back in full, therefore, no credit is admissible in respect of these inputs.

6. The issue involved in this appeal is the reversal of the credit in respect of the inputs on which credit has been taken, are removed from the factory for further processing to the job worker. As per the provisions of Rule 57F of the Rules manufacturer can remove the inputs as such outside the factory for further processing after debiting the amount equal to 10% of the value of such inputs. Sub-rule 7 provides that manufacturer shall legible to take credit of an amount equal to the amount debited by him under Sub-rule 6 when processed inputs are received back in full in the factory. Sub-rule 11 further provides if the inputs are not received back in the factory within the specified period from the job worker. The manufacturer has to recalculate the amount of actual credit attractable on such inputs. Thereafter, he shall adjust the differential amount, if any, after taking into the account the amount if any the amount already debited.

7. From the reading of the above rule, the provisions of Sub-rule 7 of Rule 57F is in respect of taking credit equal to the amount debited by the manufacturer under Sub-rule 6 at the time of removing the goods from the factory for job work, i.e. the amount equal to 10% of the value of the inputs. Sub-rule 11 of Rule 57F covers the situation when the inputs in the factory from the job work within the specified period. This issue is already settled by the Larger Bench of the Tribunal in the case, of Godrej Foods Ltd. v. C.C.E., Bhopal, reported in 2001 (46) RLT 769 (CEGAT-L.B.). The Tribunal held that if the inputs which were cleared for further processing to job work, were not receiving in the factory of the manufacturer, action is to be taken in accordance to the provisions of Section 57F(11) of the Central Excise Rules. In the present case as the inputs which were cleared from the factory for further processing were not receive back within the specified period, therefore, the action should be taken under the process of Sub-rule 11 of Rule 57F of the Central Excise Rules and credit after adjusting amount which is already debited is to be reversed for this purpose. The matter is remanded to the Adjudicating authority after setting aside the impugned order to recalculating the demand as indicated above. The appeal is disposed of by way of remand.

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