Neolex Cables Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-24-2006

Reported in : (2006)(104)ECC511

Judge : T Anjaneyulu

Appellant : Neolex Cables

Respondent : Commissioner of Central Excise

Judgement :
2. At the stage of hearing stay applications itself, appeals are heard since the points involved in both of them is one and the same.

3. These appeals are filed by the assessee, aggrived by the impugned orders passed by the Commissioner(Appeals), Central Excise, Mumbai. The issue involved in both the appeals is one and the same as such they are being disposed of by common order.

4. The assessee M/s. Neolex Cables, Western Express Highway, Mumbai, are manufacturers of Wires and cables falling under Chapter Heading 8544.90 of Central Excise Tariff Act, 1985. The main raw material of manufacturing wires and cables are cable wires which were procured from various manufacturing units. The appellants were availing Cenvat credit on duty paid on such cable wires under Central Excise Credit Rules, 2002 and the said credit was utilized for the payment of Central excise duties on clearance of their final products i.e. wires and cables.

The two Show-Cause-Notices dated 08.12.2004 for the amount of Rs. 4,07,638/- for the period- Nov. 03 to May' 04 and dated 13.05.2005 for amount of Rs. 94,172/- for the period June' 04 were issued to the appellants on the grounds that no Central Excise duty is payable 01 drawn wires based on the decision of the Hon'ble Supreme Court, in the case of M/s. Technoweld Industrial and the Cenvat credit was availed by them is not admissible. The Assistant Commissioner has confirmed both the demands with interest. The appeals filed by the assessee before the Commissioner (Appeals), Central Excise, Mumbai also met with the same false. Hence these two appeals filed by the assessee.

5. it is a observation of the learned Commissioner (Appeals) that by virtue of above judgment of apex court and Board Circular dated 29.05.2003, the process of drawing wire from wire rods does not amounts to manufacture, as such, the final product is not excisable.

6. The ld. advocate for the appellants has referred that Taxation Laws (Amendment) Act, 2006 wherein Rule 16 of the Central Excise Rules, 2002, is amended with retrospective effect from 29.05.2003 to 08.07.2004. The proviso to Sub-rule 3 of Rules 16 is amended as follows : " Provided that for the purpose of this rule, "assessee" shall include wire drawing unit which has cleared the goods on payment of an amount equal to the duty at the rate of applicable to drawn wire on the date of removal and on the value determined under relevant provisions of the Act and the rule made there under ".

Provided further that the amount paid under the first shall be allowed as CENVAT credit as if it was duty paid by the assessee whom removes the goods.

7. Further, the ld. counsel for the appellants has furnished a copy of Departmental Clarifications on Central Excise Circulars & Trade Notices which points out para 4.3 and 4.4 duly explaining the fact of amendment of Rules 16 of Central Excise Rules, 2002 which I would like to extract hereunder: 4.3 Accordingly, Show Cause Notices were issued to wire drawing units for recovery of Cenvat Credit availed on inputs on the grounds that the process o wire drawing did not amount to manufacture for the said period. Show Cause Notices were also issued to the downstream buyers of "drawn wires" who availed Cenvat Credit of amount paid as

duty on drawn wire, on the ground that the sum paid on clearance of "drawn wire" by wire drawing unit did not represent central excise duty. Such wire drawing units could also not claim the refund of amount paid as duty on drawn wire, on the ground of unjust enrichment. In this regard, Board's letter dated 3rd January 2005 Issued vide F. No. 139/3/20U4-CX.4 may be referrer to.

4.4 The retrospective amendment in Rule 6 is aimed at facilitation "wire drawing units", which had paid a sum equal to the duty leviable on "drawn wire" after availing the credit of duty paid on inputs for the said period. It is aimed at regularizing availment of credits at two stages and payment of an amount rep-eserting duty at one stage. The purpose of the amendment is to regularize credit taken at the input stage- (on wire-rod), credit taken by the downstream user of "drawn wire", and the amount paid as central excise duty on clearance of drawn wire. In other words, wire drawing units, which had paid a sum equal to duty leviable on drawn wire, would be eligible to avail the credit of duty paid on inputs and utilize the same for payment of duly on drawn wire for the period of amendment. The sum paid by the wire drawing unit in such cases will be treated as duty and shall be allowed as credit to the buyer of drawn wire, in terms of the amendment. This amendment would not create any additional liability on any wire drawing unit which did not pay duty on drawn wire during the period of amendment.

8. Lastly the Id. counsel for the appellants relied upon the Tribuna' Order Vide No. A/974 - 975/WZB/05/C-IV dated 29.07 2005 in the case of M/s. Vidya Wires Pvt. Ltd. v. CCE & Customs, Vadodara. The facts involved in the aforesaid are similar to the present case. The aforesaid decision set aside the impugned order passed by the Commissioner (Appeals) with consequential relief to the appellants therein. It is observed that the Cenvat credit can not be reversed since the appellants have paid the duty on the final product by utilization of Cenvat credit availed on the inputs used in the manufacture of wire drawings. This apart the effect of the amendment to Rule 16 of the Central Excise Rules, 2002 and the Departmental Clarificatory Note issued by the Department makes it clear that the assessee is under no obligation to reverse the credit availed.

Therefore, the impugned orders passed by the Commissioner (Appeals), Central Excise, Mumbai are not sustainable. In the result, both appeals are allowed including stay applications.