

Monika Electronics Ltd. and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-28-2006

Judge : M Ravindran

Appellant : Monika Electronics Ltd. and ors.

Respondent : Cce

Judgement :

1. Appeal Nos. E-4658/04 & E/5087/04 are filed by M/s Monika Electronics Limited and Onida Saka Ltd. against order in appeal dated 18/08/04 and 11/08/04. Appeal Nos. E/5713 - 5718/04 are filed by the revenue against the same order in appeals.

2. The relevant facts that arise for consideration are the officers of the Central Excise visited the premises of both the appellants and conducted investigation. During the course of investigation, the officers found that appellants were following the provisions of Central Excise Law as regards to (i) sending inputs unfit for use under Rule 57F(4) to original manufacturer for repairs (ii) availing modvat credit on the inputs which were rejected on line but found in the factory (iii) shortage of inputs in the case of Appeal No. E/5087/04. On a reasonable apprehension, the authorities issued a show cause notice demanding the duty from the appellants on all above three counts. The adjudicating authority confirmed the demand and also imposed penalties.

On an appeal, Commissioner (Appeal) accepted the contention of the appellant and allowed the appeal as regards the non-imposition of duty on the inputs sent

out under Rule 57F(4) but held against the appellants as regards the inputs which were rejected and not utilized in the manufacturing of final products. Commissioner (Appeal) also dropped the penalty imposed on the co-noticees. The appellants in appeal No. E/4658/04 and E/5087/04 are in appeal against the denial of modvat credit on inputs which were found rejected online and Department is in appeal against the benefit of modvat credit given to the appellants on the inputs sent out under Rule 57F(4) and also on the setting aside of penalties. Since the issue arises out of common order in appeal, they are being disposed of by one order.

3. Learned advocate appearing on behalf of the appellants submits that the inputs which were rejected by them on which they are availed modvat credit were still lying in the factory. It is his submission that these inputs are on line rejection. He submitted that it is the practice of the industry that inputs are not put to test when they are received but they are issued to the shop floor for test and fitting. If the inputs are not according to the quality requirement they are rejected and kept aside on the shop floor. He also submits that the issue in these two cases are squarely covered by the decision of the Hon'ble High Court of Delhi in the case of Asahi India Safety Glass Limited v. Union of India as reported at .

4. The Learned DR, on the other hand submits that the availment of modvat credit is always related to the utilization of the input in the manufacturing of the final product. Since in both these cases, the appellants have not utilized the inputs in the manufacturing of their final products, they should not be permitted to avail modvat credit. It is his submission that since the modvat inputs in these cases are relatable directly i.e. one to one co-relation is possible, the credit of colour picture tube/front - back covers of the colour televisions which are rejected on line were not utilised, hence no modvat credit is eligible. As regards the demand of the duty on the inputs which were sent out by the appellants under Rule 57F(4) of the Central Excise Rules, 1944, it is his submission that the picture tube which were sent out by the appellant to the original manufacturer under Rule 57F(4) did not come back repaired but what they received were new picture tubes.

Since there is a violation of provisions of Rule 57F(4), they should not be allowed credit and hence Commissioner (Appeals) order to that extent is not correct.

5. Considered the submissions made at length by both sides and perused records. The issue involved in this case is denial of modvat credit to the appellant on the ground that they have not utilized the inputs in the manufacturing of their final products. I find that the authorities when they conducted the search on the appellant's factory has recorded in the Panchnama as under : First the officers took the round of the factory and collected all the relevant records regarding the process pertaining to Production & Quality control the officers met Shri Suresh Sahni Senior Engineer of the Unit and recorded his statement under Section 14 of the Central Excise Act, 1944 wherein he inter-alia stated that colour picture tubes are not being tested at the quality control and are issued directly and tested only at the time of fitment. If any scratch or dent is noticed in the Cpt at the fitment site then it is got corrected through the representative of the supplier in the factory itself otherwise in case of other defect a sticker is pasted on them and these CPT's are sent back to the supplier under warranty scheme and we get fresh CPT's against the returned one. After getting acquainted with the process of production and quality control, the officers conducted the physical verification of the stock of finished goods and major modvatable inputs which when compared found to be tallied with the book balance recorded in RG - 1 and store Ledger respectively (Comparison chart as per Annexure E & F). However, the stock of rejected/damaged and scraped inputs namely CPT's Cabinet & Rear-cover and other raw other raw materials involving modvat credit of Rs. 66,794/- were found lying in the Raw material store of the factory.

6. It can be seen from the above re-produced portion of the Panchnama (conducted at the factory of M/s Monika Electronics Limited) clearly indicates that the appellants had informed the officers on the day of visit that they issued the inputs i.e. CPT, back and front covers directly to the shop floor for fitting. If that be so, it can be considered as an issue, made from the raw material store. The statement is also indicating that if defects are they are of minor nature the same are rectified by the representative of the manufacturer of CPT in the factory of appellants and if the defect is somewhat major, the said picture tube is kept aside

as rejected and kept out of the manufacturing process. If that be so, it can be considered, the said colour CPTs/front-back covers of the colour televisions are nothing but rejection on shop floor. Central Excise Rule 57D of Central Excise Rules 1944 categorically covers these kind of situations : "57D. Credit of duty not to be denied or varied in certain circumstances. - (1) Credit of specified duty shall not be denied or varied on the ground that part of the inputs is contained in any waste, refuse, or by-product arising during the manufacture of the final product, or that the inputs have become waste during the course of manufacture of the final product, whether or not such waste or refuse or by-product is exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty or is not specified as a final product under Rule 57A.7. I find that the issue in this case is squarely covered by the provisions of the Central Excise Rules, 1944 as reproduced above. The revenue's case in denial of modvat credit to the appellant is only in respect of the inputs which were rejected on line. I find that the issue in this case is squarely covered by the decision of the Hon'ble High Court in Delhi in the case of Asahi India Safety Glass Limited (Supra). Their lordships in their order at paragraph 30 - 33 has held as under : 30. If a sheet is rejected or a piece of sheet is rejected, it does not mean that the sheet was not used in the manufacture of safety glass. It is at this juncture again we emphasis that Sub-rule (4) of Rule 57A points out that credit is to be allowed on inputs used in the final product and all inputs used in or in relation to the manufacture of the final products, whether directly or indirectly and whether contained in the final product or not the department cannot deny credit of specified duty or even can vary on the ground that part of the inputs contained in any waste, refuse or by-product arising during the manufacture of final product or when the inputs have become waste during the course of manufacture of the final product whether or not such waste or refuse or by-product is exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty or not specified as a final product under Rule 57A. 31. In substance, when the material i.e. glass sheet is used for the manufacturing process and merely because at a later point of time after the glass has undergone the process of manufacture, it was found defective and rejected or part of the input being found defective and rejected is no ground in view of Rule 57A read with Rule 57D to deny the benefit.

32. In view of what is stated herein above, we find that the commission has misdirected itself in examining the question.

33. Considering the stage-wise process indicated earlier, it is clear that the process commences with loading of the float glass sheet on the float table where cutter is used to cut the glass to size. The process of manufacturing commences at this stage.

Therefore, if at a subsequent stage before the process of lamination, the defect is noted, it cannot be said that the process of manufacturing did not commence. In view of this, we find substance in the petition and we find no substance in the submission made by the learned Counsel for the revenue that it is not open for the Court to examine the matter. The Apex Court has pointed out in *Jyotendrasinhji v. S.I. Tripathi* clause contained in Section 245-I of the Income-tax Act, 1961 in relation to orders of the Settlement Commissioner under Section 245D(4), does not and cannot bar the jurisdiction of High Courts under Article 226 of the Constitution of India or the jurisdiction of the Supreme Court under Article 32 or under Article 136 and it remains the same i.e. to consider whether the order of Settlement Commission is contrary to the provision of the Income-tax Act and if so and whether it has prejudiced the petitioner. This of course, apart from the ground of bias or malice which constitute an independent and separate category. At page 622 the Court after examining the scheme in detail has pointed out that "it is true that finality clause contained in Section 245-I does not and cannot bar the jurisdiction of the High Court under Article 226 or the jurisdiction of this Court under Article 32 or Article 136 as the case may be". The Court also examined that the order of Commission is in the nature of package deal and it may not be possible to dissect its order and that the assessee should not be permitted to accept what is favourable to him and reject what is not. It was also argued before the Apex Court that the Commission is not even required or obliged to pass a reasoned order. The provisions contained in the Income-tax Act in so far as Settlement Commission is concerned, are pari material to the provisions contained in the Central Excise Act.

8. In view of the facts and circumstances, as indicated above and respectfully following the decision of Hon'ble High Court, I do not find any reason to sustain the demand of the duty on the appellants as regards the denial of credit on the inputs which were rejected on line and found in the factory.

9. As regards, the demand of duty on the appellants in Onida Saka Ltd. for the shortage of the inputs which were found during the visit of the officers, I find that the statements were recorded of the concerned people in the factory as on 14th January 1999 and show cause notice was issued to them on 27/03/03 i.e. almost after four years. It is a settled law that a show cause notice which is issued after two years then it is non-est as affirmed by the Hon'ble Supreme Court in the case of Gammon India Ltd. 2002 (146) E.L.T. A313 (SC) in an appeal against order of the Tribunal as reported at 2002 (146) E.L.T. 173 (Tri. - Mum). In view of this, the demand of the duty in respect of inputs found short in this case is hopelessly time barred and the confirmation thereof is set aside.

10. As regards, the demand of the duty set aside by the Commissioner (Appeals) in both the cases when the inputs were cleared from the appellant's factory under Rule 57F(4) under Central Excise Rules, 1944 and received back, I find that issue is squarely covered by the final order of the Tribunal No. A-639 - 641/03 dated 28/10/2003, wherein the Tribunal has held as under : 8. Similarly, regarding the receipt of the new CPTs by appellant No. 1, instead of those very CPTs which they sent for repairs, to appellants 2 and 3, there is no evidence to prove the same.

Appellants 2 and 3 have categorically denied of having supplied new CPTs in place of the defective CPTs, to the company appellant No. 1.

On the strength of these very allegations that the appellant No. 2 had replaced with new CPTs instead of carrying out the repair work on the defective CPTs received from company appellant No. 1, after clearing from the factory without payment of duty show cause notices for different periods were issued to them way back in the year 1994.

But the then Collector of Central Excise, Meerut dropped the proceedings by holding that the allegations did not stand proved from the bald fact that they did

not mention the identification mark/SI. No. on the CPTs sent back by them after repair to the company appellant No. 1. That order of the Collector was upheld by the Tribunal also and the same is reported in 2000 (41) RLT 333. In the face of that order, it is legally not permissible to accept those very allegations against the appellant No. 2 of having not repaired the defective CPTs received from the company appellant No. 1, but replaced the same with new ones by clearing the same from the factory without payment of duty.

10. It is also worthy to note that no DEMAND of duty has been raised against company appellant No. 2 on the ground of having cleared new CPTs in the guise of defective repaired CPTs, to the company appellant No. 1 during the period in dispute. If the allegations of the Department are to be accepted, then they must have raised duty demand against them. As observed above earlier show cause notices issued to this company (appellant No. 2) on these very allegations were dropped by the Collector and that order of the Collector had been upheld by the Tribunal as detailed above. This circumstance is enough to belie the allegations of the Department against appellant No. 2 of having cleared the new CPTs in the guise of the repaired CPTs to company appellant No. 1.

11. From the above reproduced paragraphs, I find that the issue before the Division Bench of the Tribunal was in respect of the one of the co-noticee i.e. Samtel Colour Ltd.. Respectfully following the said order of the Division Bench, I do not find any merit in the appeals of revenue as regards the dropping of the proceedings by the Commissioner (Appeals) on this account. As regards, the revenue's appeals against the setting aside the penalties by the Commissioner (Appeal) on other people, I find that the penalty has been imposed under the provisions of Rule 209A of the Central Excise Rules, 1944. The Commissioner (Appeal) has correctly come to the conclusion that provisions of Rule 209A are not applicable in this case to the limited companies and hence the order setting aside the penalties under Rule 209A is correct and does not require any interference.

12. Accordingly, the appeals filed by the appellant i.e. Monika Electronics Limited - Appeal No. E/4658/04 and Onida Saka Ltd. - Appeal No. E/5087/04 are allowed with consequential relief, if any and appeal No. E/5713 - 5718/04 filed by the

revenue are rejected.

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