

Cce Vs. Hotline Cpt Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-22-2006

Judge : P Das

Appellant : Cce

Respondent : Hotline Cpt Ltd.

Judgement :

1. The instant appeal is filed by the Revenue against the order of the Commissioner (Appeals).
2. The brief facts of the case, are that the respondents are engaged in the manufacture of colour picture tubes. It has been alleged that the respondent sent defective colour tubes under the cover of Rule 57F(4)'s challan to the suppliers of picture tubes viz., M/s. BPL Display Devices Ltd., M/s. Samtel Colour Ltd. and M/s. Hotline CPT Ltd. (formerly known as LG Hotline CPT Ltd.) and had colluded with these suppliers to facilitate them to avail inadmissible Modvat credit in respect of fresh non-duty paid colour picture tubes supplied under the garb of repaired CPTs received from M/s. Hotline Wittis Display Devices Ltd. under the cover of Rule 57F(4) challan. It has further been alleged that conspiracy has been hatched between H.W.D. D. Ltd. and the supplier to send the defective picture tubes under the guise of challan issued under Rule 57F(4) of the Central Excise Rules.
3. The Joint Commissioner of Central Excise, Noida confirmed the demand of duty and imposed penalty of Rs. 3,00,000/- upon the appellant. The Commissioner

(Appeals) allowed the appeal with consequential relief.

The relevant portion of the findings of the Commissioner (Appeals) are reproduced below: 9. The main issue involved in the appeals for decision before me is whether the defective CPT's were sent for repair by the appellants under the Challan issued under Rule 57F(4) & 173H and in lieu thereof, received new CPTs sent by the supplier. I find that the appellants sent defective picture tubes; for repair under warranty clause and received back after repair, the repaired picture tubes.

There is nothing on records, which proves any thing otherwise. It is also observed that the appellants had adopted the procedure as laid down under Rule 57F(4) & 173H before sending the defective picture to the supplier/manufacture of CPT's for repair. The issue has been decided in the case of CCE Meerut v. Samtel Colour Ltd. 2000 (41) RLT 333 CEGAT wherein it was found that the defective picture tubes were received back for repairs under warranty clause under Rule 57F(4) after they were dismantled in salvage section, serviceable parts recovered. Hon'ble CEGAT has held that such activities amount to repair and not to manufacture. This decision goes to show that M/s. Samtel Colour Lab were receiving and repairing defective picture tubes, which were then being sent back to the appellants.

10. Similarly, the issue of M/s. BPL Display Devices Ltd., has already been decided by the Hon'ble CESTAT vide Final Order No. A/665/01-NB(SH) dated 10.5.2001 wherein it is held that the activity undertaken by M/s. BPL does not amount to manufacture. The ratio of the above decision of the Tribunal is applicable to the facts and circumstances of the present case. Thus, I do not find any reason to demand duty or to impose the said penalty on the appellants on this count. In the case of M/s. JCT Electronics Ltd. Mohali, Chandigarh.

Vide Final Order No. A/639-41/03-NBC dated 28.10.2003, the Hon'ble CESTAT held that the non-mention of the identification mark or SI.

No. of the CPTs by them at the time of sending back the CPT after repair did not warrant a presumption which has been drawn by the adjudicating authority that those CPT were never repaired but replaced by them. All these judgments are

applicable in the present case.

4. Revenue filed the instant appeal against the aforesaid order of the Commissioner (Appeals). It has been contended in the Memo of Appeal that the Commissioner (Appeals) Central Excise, Noida vide OIA No.304-CE/Appls./Noida/04 dated 30.9.2004 decided the appeal filed by them and allowed the same by setting aside the order of adjudicating authority by taking reliance on tribunal's order in the case of CCE, Meerut v. Samtel Colour Ltd. 2000(41) RLT 333 and CESTAT Final Order No. A/665/01-NB(SM) dated 10.5.2001 in case of BPL Display Devices Ltd. This issue has already been challenged before Hon'ble High Court in case of M/s. Samsung India Ltd., Samtel Colour Lab etc., therefore OIA passed by the Commissioner (A), taking reliance of CESTAT's orders does not appear proper as issue has not attained finality in view of appeal pending before Hon'ble High Court, Allahabad.

5. Shri Sanjay Kumar, learned DR argued the case at length. He reiterated the grounds of appeals. He also produced the decision of the Tribunal in the case of Vikrant Tyres Ltd. v. CCE wherein it has been held that Modvat credit not admissible if goods sent out for reprocessing could not be correlated with the goods received back after reprocessing under Rule 57F and 173L of the Central Excise Rules, 1944. He also contended that non-mentioning of the identification mark/ number of colour picture tubes in 57F(4)'s challan is not mere procedural lapse.

6. The learned Counsel for the respondents submitted that issue involved in this case is squarely covered by the following decisions of the Hon'ble Tribunal: BPL Display Devices Ltd. v. CCE Meerut Order No. A/665/2001-NB Hotline CPT Ltd. v. CCE, Indore Final Order No. 417/04-NB(A) dated 12.5.04 (4) CCE, Noida v. Dixon Utilities & Export Ltd. Final Order No. A/626/05-NBS dated 26.4.05 7. The learned advocate strongly relied on the case of Dixon Utilities & Export Ltd. (Supra), wherein the Tribunal held as under: I have considered the submissions of both the sides. Learned Advocate for the respondents has rightly mentioned that the issue involved stands decided by the Tribunal in the case of respondents themselves. Proceedings were; initiated for demand of duty in respect of coloured picture tubes

on the ground that S. No. of coloured picture tubes were not mentioned in challan issued under Rule 57F(4) of the Central Excise Rules, 1944. The Tribunal has observed in the Final Order No. 1125-1132/04A dated 18.10.04 that earlier Final Order No. 84-86/01 dated 13.7.01 by which the proceedings initiated against M/s. Samtel Ltd. were dropped, has been accepted by the Revenue which had not filed any Appeal against the same. Further merely non-mention of S. No. of the coloured picture tubes sent for repair in Rule 57F(4) challan does not lead to presumption that the picture tubes instead of being repaired have been manufactured. A positive evidence leading to such conclusion has; to be brought on record by the Revenue. Accordingly, there is no merit in Appeal filed by Revenue which is rejected.

8. After going through the submissions of both sides, I respectfully agree with the view taken by the Tribunal in the case of M/s. Dixon Utilities Export Ltd. (Supra). On a query of the Bench, the learned D.R. could not produce any stay order in respect of the appeal filed by the Revenue before the Hon'ble High Court of Allahabad, as stated in their Memo of Appeal. Accordingly, the appeal filed by the Revenue is rejected.

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