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Commissioner of Central Excise Vs. Ruby Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-26-2006

Judge : J Balasundaram, Vice, A T K.K.

Appellant : Commissioner of Central Excise

Respondent : Ruby Mills Ltd.

Judgement :

1. The respondent herein is a composite mill comprising various units such as spinning plant, weaving plant and processing plant, located at Dadar, Mumbai. In the spinning plant, yarn was manufactured out of fibre, and either cleared on payment of duty or further used for captive consumption in the manufacture of grey fabric at the weaving plant and the grey fabric was either cleared on payment of duty or further used for processing in the processing plant. They were availing the benefit of cenvat credit on fibre/yarn and paying appropriate duty on the yarn cleared outside the factory. They shifted the spinning unit from Dadar to Dhamni, their new factory in Raigad District, Maharashtra, and intimated that they stopped spinning activity at Dadar vide letter dated 18.5.2002. They also sought permission to transfer unutilised balance of additional duty of excise paid under the provisions of the Additional Duties of Excise (Textiles and Textile Articles) Act to their Dhamni unit under cover of their letter dated 17.1.2004. Show cause notice dated 15.3.2004 was issued to the assessees proposing rejection of their request, and the notice was adjudicated vide order dated 19.3.2004 by the Assistant Commissioner, rejecting the claim on the ground that they had shifted only the

spinning unit/plant from Dadar to Dhamni and had not shifted the entire factory, as required under Rule 8 of the Cenvat Credit Rules, 2002.

Vide order dated 19.1.2005, the Commissioner (Appeals) allowed the appeal of the assessees by granting transfer and also accepted the respondents' claim made on 10.9.2004 for refund of unutilised credit in cash, as there was no payment of duty at the Dhamni unit w.e.f.

19.7.2004. Against this order, the Revenue has preferred appeal No.E/1178/05.

2. Another show cause notice dated 1.4.2005 was issued to the assessees proposing rejection of the claim for grant of cash refund on the ground inter alia that unutilised credit cannot be refunded in cash; the notice was adjudicated on 12.5.2005 by the Assistant Commissioner who rejected the claim on the ground that the entire factory was not transferred and further the maximum amount that could be permitted to be transferred was Rs. 50,45,594/- that is the amount standing in balance on the date of transfer of spinning unit to Dhamni, and that there is no provision for grant of cash refund. The Commissioner (Appeals) vide his order dated 29.9.2005, allowed the appeal of the assessees against the order dated 12.5.2005; this has given rise to appeal No. E/4197/05 by the Revenue.

4. Rule 8 of the Cenvat Credit Rules, 2002, which provides for transfer of credit, reads as under: (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilised in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) The transfer of the CENVAT credit under Sub-rule (1) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Commissioner.

The Rule permits transfer of cenvat credit only if the factory is shifted to another site or is transferred due to change of ownership, sale, merger, amalgamation, lease or transfer of factory to a joint venture. The Rule does not permit transfer of credit if only a part of the factory is shifted. The assessees have only shifted a part of the factory, viz. their spinning plant. Even as per Section 2(e) of the Central Excise Act, 1944, which has been relied upon by the lower appellate authority to permit transfer, a factory means "any premises including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with production of these goods is being carried on or is ordinarily carried on." In other words, although a factory includes part of a factory, the converse is not true. A part of factory is not factory. In this view of the matter, we agree with the department that the provisions of Rule 8 of the Cenvat Credit Rules, 2002, do not cover the assessees and that they are not entitled to transfer of cenvat credit. On this ground alone, we set aside the impugned orders and allow the appeals of the Revenue, without recording any finding on the other pleas advanced before us.

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