

Max India Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-12-2007

Judge : P Das

Appellant : Max India Ltd.

Respondent : Cce

Judgement :

1. In all the appeals filed by the appellants, common issue is involved and, therefore, they are taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of BOPP films classifiable under heading No. 39.20 of the Central Excise Tariff Act, 1985. They availed cenvat credit on capital goods namely L-4 Filter Stack consisting of 34 filter candles which was sent for repairs to U.K. The appellant reversed cenvat credit while clearing of the capital goods for repairs. The appellants received back the said capital goods in their factory after repair and paid duty on bill of entry against which they have not taken any cenvat credit. Subsequently, they detected that they had erroneously reversed cenvat credit at the time of clearance of the capital goods for repairs. As such, the appellants filed refund claim.

Show cause notices were issued; alleging that while examining such cases by Head Quarter office, on post audit of the refund claims of the appellants, objected to the sanctioning of the refund on the grounds that there is no provision in Central

Excise Law to allow refund of duty deposited deliberately i.e. amount debited in self violations. In the impugned order, the Commissioner (Appeals) observed that as per provisions of Rule 3(4) of the Cenvat Credit Rules, the appellants were required to pay/reverse the amount equal to duty at the time of removal of such goods which they have done. Hence, he rejected the refund claim.

3. The learned advocate on behalf of the appellant submits that the show cause notice was issued on the basis of post audit objection which is not maintainable in view of the decision of the Hon'ble Bombay High Court in the case of *Bombay Chemicals Ltd. v. Union of India*. He also submits that the Commissioner (Appeals) wrongly proceeded on the basis of Rule 3(4) of the Cenvat Credit Rules, 2002. He submits that in this case, the appellant cleared goods for repairs under Sub-rule 5 (a) of Rule 4 of Cenvat Credit Rules, 2002 wherein no duty is liable to be reversed if capital goods are sent to job workers for repairs. He submits that the appellant erroneously paid duty at the time of clearance of the capital goods for repair which is refundable to them.

4. The learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that the Commissioner (Appeals) rightly invoked Rule 3(4) of the Cenvat Credit Rules, 2002 as the appellant removed the capital goods as such.

5. After hearing both sides and on perusal of the record, there is no dispute that the appellant cleared the capital goods for repairs which were received back in their factory within 180 days. Therefore, the learned advocate rightly contended that in this case, Rule 4(5)(a) of the Cenvat Credit Rules, 2002 is applicable. However, the learned advocate fairly conceded this rule was not cited before the lower appellate authority. As such, the matter deserves to be remanded to the Commissioner (Appeals) for de-novo decision.

6. The appeals are allowed by way of remand to the Commissioner (Appeals) to decide the matter after examining the applicability of the aforesaid Rule in accordance with law.