Gkn Sinter Metals Ltd. Vs. Ccex

Gkn Sinter Metals Ltd. Vs. Ccex

SooperKanoon Citation : sooperkanoon.com/46304

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-17-2007

Reported in : (2007)(123)ECC322

Judge : M Ravindran

Appellant : Gkn Sinter Metals Ltd.

Respondent : Ccex

Judgement :

1. This appeal is directed against the Order-in-Appeal No. PI/313/2006 dated 20.9.2006.

2. The relevant facts that arise for consideration are that the appellants had purchased plastic crates, which were used in their factory premises for transportation, storing of raw materials and finished goods within the factory premises. Show cause notice was issued to the appellants based upon the audit query that appellants have availed cenvat credit on plastic crates, which is inadmissible since the crates are not used in or in relation to manufacture of their final products.

3. The adjudicating authority confirmed the demand on the ground that the plastic crates were used by the assessee for storing raw materials, which has no relation to the manufacture of the final products. On an appeal, the Commissioner (Appeals) dismissed the appeal of the appellants on the ground that the plastic

crates were neither integrally connected with the manufacturing process, nor the value appears to have been included in the value of final products but they are used for convenient transportation of the finished goods.

4. The ld. Advocate appearing on behalf of the appellant submits that they have been contesting the issue on "inputs" as defined under Rule 57AA of the Central Excise Rules, 1944, according to which all goods, except high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly on indirectly credit is available. It is her submission that the appellant are using the plastic crates as inputs for storing raw materials and finished goods in the factory premises.

It is her submission that these plastic crates are used for storing/transportation of the goods within stores/factory of production. Proper storage of inputs is very essential for efficient manufacturing process. Unless the inputs are stored in separate crates as per their specifications, part numbers, usage etc. they cannot be processed further, efficiently for the purpose of manufacture of the final products if they are in mixed up conditions. It is her submission that if the storing facilities are not proper, the same will adversely affect the manufacturing process. To protect the inputs from deterioration, avoid mixing with other inputs, for proper maintenance of quantitative records, the use of plastic crates is made and the same is essential in this respect.

5. The ld. SDR on the other hand submits that the Commissioner (Appeals) has clearly come to the conclusion that the plastic crates were used for convenient transportation of the finished goods to their customers and after delivering the finished products, the same were brought back to the factory for reuse. It is his contention that the said allegation was in the show cause notice and the appellants have not refuted the said allegation. It is his submission that the finding of the Commissioner (Appeals) is correct and does not require any interference.

6. Considered the submission made by both sides at length. The appellants in their reply to show cause notice have submitted as under: The plastic crates are used for storing/transportation of the goods in stores/factory of production. Proper storage of inputs is very essential for efficient manufacturing process. Unless the

inputs are stored in separate crates as per their specifications, part numbers, usage etc. they cannot be processed further, efficiently for the purpose of manufacture of the final products if they are in mixed up conditions. If the storing facilities are not proper, the same will adversely affect the manufacturing process. For protecting the inputs from deterioration, avoid mixing with other inputs, for proper maintenance of quantitative records, plastic crates are used and the same are essential. Hence, use of crates in stores is undisputed and the same indirectly supports the manufacturing process. Hence, it can be concluded that the use of plastic crates is in relation to manufacture of final products and the central credit has been rightly availed.

As against the above submission, the lower authority while coming to the conclusion that appellants are not eligible for Cenvat/Modvat credit on these plastic crates held as under: I find that even though the definition of inputs is very wide and include all goods except petrol and even the packing materials the plastic crates which are used only for storing of raw material inside the factory do not fall in the category of packing material and thus are not eligible for availing input credit.

I, further, find that the plastic crates used by the assessee for storing of raw material cannot be said to be used in or in relation to manufacture as storing of goods cannot be considered as manufacture, I am therefore of the view that as per the eligibility criteria for availing Cenvat credit of input the plastic crates are neither inputs nor packing material and also not used in or in relation to manufacture of final products.

7. It is seen from the above reproduced reply of the appellants as well as the findings of the adjudicating authority, that lower authority has denied the credit only on the ground that the plastic crates were used by the assessee for storing the raw materials as it, cannot be said in relation to the manufacture of final products.

8. I find that the issue is settled in favour of the appellant by the judgment of the Hon'ble Supreme Court in the case of Collector of Central Excise v. Solaris Chemitech Ltd. , wherein the Apex Court has held that "the words "in relation to"

which find place in Section 2(b) of the Central Excise Act, 1944 have been interpreted to cover processes generating intermediate products and it is in this context that it has been repeatedly held that if manufacture of final product cannot take place without the process in question then that process is an integral part of the activity of manufacture of the final product. Therefore, the words "in relation to the manufacture" have been used to widen and expand the scope, meaning and content of the expression "inputs" so as to attract goods which do not enter into finished goods." 9. It is seen from the above reproduced head note of judgment that the issue is squarely covered in favour of the appellants. Accordingly, the appeal is allowed and impugned order is set aside with consequential relief, if any.