R.M. Polypack Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-2008

Reported in : (2008)(129)ECC100

Judge : J T T.K.

Appellant : R.M. Polypack Pvt. Ltd.

Respondent : Cce

Judgement :

1. This appeal has been filed against Order-in-Appeal No.15/CE/Alld/2006 dt.23.2.06 passed by the Commissioner of Customs and Central Excise (Appeals). Allahabad.

2. Ld. Advocate who appears for the appellant stated that the demand in this case relates to the Cenvat credit availed on the inputs by the job worker in respect of the goods manufactured on job work basis and returned to the principal manufacturer. The job worker apart from receiving the raw-materials from the principal manufacturer obtains on his own certain inputs which he uses for the manufacture of goods on his own account and also on account of the principal manufacturer.

According to the revenue, the job worker clears the said goods to the principal manufacturer without payment of duty and therefore, he would not be entitled to take any cenvat credit at all. Ld. Advocate argued that the facts of this case are identical to the case of Sterlite Industries (I) Ltd. v. CCE, Pune Larger Bench has ruled that the job worker who received goods from manufacturer under Rule 57F of erstwhile Central Excise Rules, 1944 is entitled to take credit of duty in respect of other inputs received directly and used by him in manufacture of said goods on job work basis. The reasoning of the Tribunal is that the impugned goods are neither exempted nor subject to Nil rate of duty. Hence, the provisions of Rule 57C would not be attracted in such cases.

3. Ld. Departmental Representative took me to the impugned order and reiterated the contentions of the revenue.

4. On a very careful consideration of the matter, I find that in terms of law only when the final product is subject to Nil rate of duty or exempted, Cenvat credit can be denied. In this case even though the job worker does not pay any duty on the goods cleared to principal manufacturer, ultimately the principal manufacturer clears such goods on payment of duty. Therefore, the goods on which cenvat credit has been taken are neither exempted nor subject to Nil rate of duty.

Therefore, there is no legal sanction for denial of Cenvat credit on the ground that the job worker himself clears the goods without payment of duty.

5. In any case, I am bound to follow the ratio of the Larger Bench decision (supra) which has not been set aside. Hence, I set aside the impugned order and allow the appeal with consequential relief.