

Collector of Central Excise Vs. Electrical Switchgears (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-27-1989

Reported in : (1990)(27)LC398Tri(Delhi)

Judge : S Maruthi, R T V.

Appellant : Collector of Central Excise

Respondent : Electrical Switchgears (P) Ltd.

Judgement :

1. The issue involved is common to all the appeals, and therefore, they are disposed off by a common order.
2. The department has come in appeal against various orders of the appellate authority holding that the respondents are entitled to the deemed Modvat credit in respect of the inputs such as HR/CR Sheets, M.S. Bars, Flat & Round etc. in terms of deeming declaration dated 7th April, 1986 issued by the Government of India under Rule 57-G(2) of the Central Excise Rules, 1944.
3. The contention of the department is that under the declaration dated 7th April, 1986 no Modvat credit is permissible if inputs are clearly recognisable as being non-duty paid or charged to nil rate of duty.

Since all the inputs involved are wholly exempt from duty under notification No. 208/83-CE dated 1st August, 1983 they are clearly recognisable as non-duty paid and therefore, no Modvat credit is permissible.

4. The respondents contended that the issue is covered by the order of this Tribunal in Collector of Central Excise v. Kapsons Electro Stampings . These inputs are purchased from the open market The exemption under notification No. 208/83 is a conditional one, and the onus is on the department to prove that the inputs are non-duty paid. The department has not adduced any evidence that the inputs are non-duty paid, and have the order of the lower authority is correct. The Collector of Central Excise v. Kapsons Electro Stampings . It was held that: M.S. Sheets are exempted from the whole of the duty of excise in terms of Notification No. 208/83-C.E. only if the inputs (for the sheets) falling under the same Chapter 72 have already paid duty or no credit of duty has already been taken on the inputs either under Rule 56A or under Rule 57A, as the case may be. Department has failed to produce any evidence that the aforesaid conditions are satisfied in the case of M.S. Sheets purchased by the respondents from the dealers in the open market are fully exempted from duty.

The direction dated 7.4.1986 of the Government issued in terms of the proviso to Rule 57G(2) clearly entitles the manufacturer purchasing the steel sheets of thickness not exceeding 5mm to take MODVAT credit at the rate of Rs. 500/- per tonne without production of documents evidencing payment of duty. If the department contends that Clause (ii) of the direction namely, "if such inputs are clearly recognisable as being nonduty paid or charged to nil rate of duty" is applicable to these inputs (M.S. Sheets), it is for department to produce sufficient evidence in support of their contention, which they have not. Therefore, the contention of the department that MODVAT credit is inadmissible to the respondents is not acceptable.

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