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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-21-1991

Reported in : (1994)(74)ELT918Tri(Mum.)bai

Appellant : Eimco Elegon (India) Ltd.

Respondent : Collector of C. Excise

Judgement :
1. This is an appeal directed against the order of the Collector (Appeals), bearing No GSM-1823/89-Ahmedabad, dated 8-9-1989 rejecting the appellants' appeal.

2. Facts of the case are that the appellants, who are the manufacturers of Dump loaders, also manufacture components such as air motors, wheel rim assembly, pistons. In some cases these components are also cleared as such outside the factory. Two such clearances have taken place under GP 1 No. 67, dated 7-6-1987 and GP 1 No. 45, dated 16-5-1987. However, due to labour trouble the consignment could not be received in the factory of the consignee and they have been received back on 4-1-1988.

The appellants filed an intimation before the excise authorities indicating the aforesaid position of the return and also indicating that they are availing of Modvat credit in respect of duty paid on these components. Modvat credit of duty amounting to Rs. 9791.40 was however denied to them on the ground that these are duty paid goods, removed outside. They can be brought only under the purview of Rules 51A, 173H and 173L and in this case the goods have been used as components in loader manufactured by them and they have not been cleared as such and hence the benefits of those rules are not available and they cannot also be eligible for Modvat credit, because of the fact that though inputs manufactured and used within the factory of production are covered by the term "inputs", in this case the goods manufactured have been cleared outside to a third party and have been returned and hence they would not come within the purview of the definition "inputs". Shri K.A. Sindhi, stating the aforesaid facts contended that under Rule 57A, it is clearly laid down that the goods manufactured and used within the factory are eligible for Modvat credit. In fact they are also governed by the exemption notification in respect of the goods captively consumed, wherever the inputs and final products are covered by the Modvat Scheme. In this case, the goods have been cleared on payment of duty and they have not been taken delivery by the consignee and the ownership rests with them; since they cannot be put to any process and they did not require to be repaired or reconditioned they have thought of utilising them as components, for which a declaration under Rule 57G has already been filed on 26-11-1987 before the concerned authorities and the date of D-3 declaration is 4-1-1988. He, therefore, contended that Modvat credit should be made available to them.

3. Shri C.P. Arya, the Ld. SDR, on the other hand, contended that when the goods are cleared out of the factory they can be brought back only under the provisions of Rule 57A or Rule 173H or 173L. In this case, though they have declared the components as inputs for loaders, they were availing of exemption in respect of their own production of the components captively used. In this case, the components were cleared as final product outside and have been returned. Hence the proper course available to them is only Rule 173L or 173H. In the case of Rule 173H, it is not even required to be subject to any process; it can even be for their own use.

4. After hearing both the sides, I find that the undisputed facts are that the components as well as the final product are covered by Modvat scheme. Duty has been paid on these components. Merely because they have gone outside on payment of duty and returned, they cannot cease to be notified goods eligible for Modvat credit. It is also pleaded that because of the consignee's refusal to take the

delivery of the goods, the ownership continues to rest with them. Explanation to Rule 57A also covers inputs lying within the factory and used by them. Even Rule 173H (as pointed out by Shri Arya) indicates that the goods brought back can be utilised by them for their own use. In view of the facts as above, I do not find any justification in upholding the contention of the authorities below. I, therefore, allow the appeal with consequential relief by way of extension of Modvat credit.