

Collector of Central Excise Vs. Leader Engineering Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-09-1991

Reported in : (1991)LC361Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Leader Engineering Works

Judgement :

1. These appeals have been filed against the order of the Collector (Appeals), New Delhi.
2. Both the sides submitted that in all these appeals issues regarding admissibility or otherwise of Modvat credit in respect of the items in question are involved.
3. These items and their particulars have been shown in the chart filed by the respondents and agreed to by the learned DR and incorporated in the form of annexures to this order.
4. On 15-2-1991 both the sides stated that as regards items 1 to 7 in Annexure I in the issue involved relates to deemed credit in respect of these items which appear in the deemed credit order of 7-4-1986 (prior to amendment) which were wholly exempted from duty under conditional notifications and had been purchased from the market. This issue has already been decided by the Tribunal in series of orders, the latest being A/532-542/90-NRB dated 20-12-1990 and therefore similar orders may be passed.

5. As regards items at S. Nos. 8 to 12 (Annx. I), the learned DR stated that they are not used as inputs for the manufacture of final products but are only used as materials for producing sand moulds and sand cores and therefore Modvat was not available in respect of these items as held in the Tribunal's order in the case of Muzzaffarnagar Steels reported in 1990 (44) E.L.T. 552 and Mysore Kirloskar Limited reported in 1990 (50) E.L.T. 175 (Tri.) 6. The learned counsel contended that these sand moulds and cores are not apparatus or equipment in the normal sense of the term and they are not paying any duty thereon. The items 8 to 12 are used in connection with the production of these moulds and cores which are themselves used for giving appropriate shapes i.e. for casting.

7. They have filed written technical write up on the process of manufacture which may be taken note of. Further the term used in the case of Modvat order is inputs 'used in relation to the manufacture'.

These cores and moulds are distinguishable from other types of cores and moulds which may fall within the category of equipment and appliances. Hence, these sand cores and sand moulds should be distinguished from other types and should be considered as items used in relation to manufacture of valves and corks.

8. In the alternative he would also draw our attention to Madurai Collectorate Trade Notice No. 163/88 as amended and that of other Collectorates reported in 1988 (38) E.L.T.-T9 which refer to items used in the manufacture of sand moulds and state that credit of duty paid on such inputs would be available if the same are not fully exempted from Central Excise duty; And full exemption of duty came only by way of Notification No. 381/86 dt. 29-7-1986. He pleaded that the Modvat credit is required to be given on resin coated sand as well as other items on the same analogy.

9. In so far as Nickel and Tin items 13-14 are concerned it was submitted by the learned counsel that though the department has not taken up the issue in their appeal they have filed cross-objections.

The Collector (Appeals) had not upheld their request in respect of four appeals, namely E/312 to 317/88. However, he [The Collector (Appeals)] had remanded the

matter in respect of other four appeals namely, E/2791 to 2794/88.

10. It was their contention that these items had been purchased by them from MMTC and they had produced the invoices. The Asstt. Collector had disallowed the credit on the ground that certificates have not been produced.

11. However, production of these invoices was sufficient in terms of Trade Notice dt. 25-11-1986 of Bombay-I. This Trade Notice has been issued after the period to which the case pertains. Further even if in those days only certificates were acceptable, had they only been told that certificates are required instead of invoices they would have definitely procured and produced them.

12. In fact they have already obtained them and filed them with their cross-objection along with an application under Rule 23. Therefore, their request is that these matters may also be remanded on the analogy of the other appeals in so far as this aspect is concerned.

13. The learned SDR has no objection to acceptance of Rule 23A application and to remand of these cases in these circumstances (in so far as these two items are concerned).

14. The matter was adjourned at this stage and was further heard on 19-4-1991.

15. On 19-4-1991, the learned DR filed a photo-copy of the Harmonized Commodity Description and Coding System showing classification of moulds and moulding patterns, etc. under Heading 84.80.89.

16. He stated that 84.80.79 covers moulding patterns or moulds for metals and metal carbides.

17. He would like to point out that in general the essential function of mould is to retain the material in a particular determined shape.

18. It was his submission that since the said moulds also perform the function of retaining the material in a pre-determined shape, therefore, they are articles in the nature of equipment or an apparatus.

19. He would also like to draw attention to the 'moulding patterns' about which it has been mentioned that these include moulding boxes for metal foundry, etc. used in the preparation of 'sand mould'.

20. It was also his contention that the life of mould is not relevant.

It is immaterial whether, after they are used, they can be used further or are required to be thrown away or destroyed. He emphasised that moulds can be made of even wax or ceramics although ceramic moulds are excluded from this heading.

21. It was also his contention that as a matter of fact these moulds are manufactured products which are excisable articles falling under Heading 84.80; and in fact the exemption Notification No. 381/86 dated 29-7-1986 has been issued in respect thereof exempting those moulds which are used for captive consumption. The language of this notification would show that the moulds can be sent out of the factory also and in that case Chapter 10 procedure is applicable. From this it is evident that they were excisable and duty was required to be paid unless exempted.

22. It was his submission that the Items 8 to 12 of the chart are actually inputs for manufacture of these moulds and are not inputs for the manufacture of metal cocks and valves and the cores or moulds themselves were in the nature of apparatus and equipment and therefore not eligible. Hence, the Modvat benefit claimed was not available to the appellants.

23. The learned counsel sought leave of the Court to file an affidavit signed by the appellant dated 18-4-1991 indicating the manufacturing process of valves and cocks and drew attention to para 8 of the affidavit in which it has been stated that the moulds and cores made by them are not sold in the market and they are not marketable goods either.

24. In support of their contention that these are not 'goods' and not marketable, and learned counsel also sought leave of the Court to file the affidavits of two firms dealing with valves and cocks. Both these firms have indicated in the affidavit that such moulds are not known to the market as commercial goods.

25. The learned counsel also sought leave to produce a certificate dated 17-4-1991 from a Chartered Engineer and Consultant Shri Surender Nath Seth dated 17-4-1991.

26. In response to a question from the Bench the learned counsel stated that this material was not before the adjudicating authority.

27. He also stated that there is a Notification No. 217/86 dated 2-4-1986. This notification exempts only those articles used for captive consumption which are not in the nature of equipment or machinery or apparatus or tools. Therefore, the argument of the learned DR that they did not charge duty because these had been used for captive consumption was self-contradictory. Furthermore in so far as Notification 381/86 is concerned, it was his contention that a notification does not determine whether a thing was an excisable product chargeable to duty. On the other hand the exemption notification can exempt only such things which were by virtue of the statute and the tariff found to be excisable products.

28. The learned counsel further stated that the department had at no stage asked them to either file the classification list or otherwise treated the items as excisable.

29. It was also his contention that Notification 381/86 may apply to such moulds which are marketable but the cores and moulds made by them are not marketable. Actually metal boxes are used as moulds for making the cores for manufacturing valves and cocks and the cores are consumed in the process and are destroyed. He emphasised that what they are purchasing is sand and other raw material which is used in the casting of these moulds including carbon-dioxide and other items mentioned at 8 to 12 of the chart.

30. We observe that as regards Items 1 to 7, Annexure I namely, Copper Gun Metal Scrap/Boring (7401/7402), Iron & Steel & Articles of Iron & Steel (7209), Lead (7801), Zinc (7901), Pig Iron/Castings (7201/7307), Steel Scrap and Articles of Iron/Steel (7203/10), Aluminium (7601), the submission of both the sides that the issue regarding availability of deemed credit in respect of items purchased from the market which was exempted from duty under conditional notifications is covered by the Tribunal's order including A/532-542/90-NRB dt. 20-12-1990 is

correct.

As such the department's appeal in respect thereof is rejected and the orders of the Collector (Appeals) are confirmed in so far as it relates to these items.

31. Similarly, in so far as Items 13 and 14, namely, Nickel (75.01) and Tin (80.01) are concerned it is observed that the department had not taken up the issue in its appeals but the respondents have taken up the same in the Cross Objection filed by them.

32. As far as the request of the counsel for remand of the matter (in so far as it relates to these items) is concerned, we observe that DR has no objection.

33. We also observe that the respondents have filed an application under Rule 23, We allow the same.

34. We further observe that the submissions of the learned counsel have a strong force. We, therefore, remand the matter to the Asstt.

Collector for readjudication with the direction that he may take the documents filed under Rule 23 application into account. He may also allow the respondents to make further submissions if any required to be made in support of their viewpoint.

35. In so far as the Items 8 to 12 Annexure I are concerned it is observed that these are chemicals which are admittedly utilised in preparation of sand moulds and sand cores which are themselves utilised for casting the metal cocks and valves and a question has arisen whether they can be considered as inputs eligible for benefit under the Modvat scheme or hit by the bar regarding equipments/apparatus.

Besides, the department has pleaded that these raw materials are actually used for the manufacture of sand cores and moulds and these sand cores and moulds are in the nature of equipment which is used for manufacture of valves and cocks. Hence, these chemicals are not eligible for Modvat benefit.

36. The respondents on the other hand has pleaded in the main that the sand cores and sand moulds are not equipments but are items which themselves get

consumed in the process of manufacture of valves and cocks. Hence, Modvat credit benefit was available to them in respect of these chemicals.

37. In this respect we notice that the respondents have filed a detailed affidavit and in so far as it relates to the process of making sand moulds and cores the facts have not been contradicted or denied as such by the department.

38. The learned DR on the other hand has drawn our attention to the classification of moulding boxes for metal foundry, Mould bases, Moulding patterns and moulds for metal or metal carbides which filed a photo-copy of the SCCM pages 1319 and 1320 showing such items as classifiable under 8480.30 and indicating that in general the essential function of a mould is to retain the material in a predetermined shape while it sets; some moulds also exert a certain pressure on the material. The DR has also argued that such moulds and cores are excisable and even dutiable unless exempted.

39. We have considered these submissions and observed that the process of manufacture of cocks and valves shows that the chemicals in question are utilised in the process for preparing specified cores and moulds which are utilised further for casting of metal valves and cocks and the coming into existence of the sand core patterns of required specifications merely constitutes, as such, a stage in the process of manufacture of valves and cocks. This coming into existence of sand cores and sand moulds temporarily does not alter the basic fact that the chemicals in question essentially act as inputs for processes which ultimately result(s) in the manufacture of metal valves and cocks. In this process the moulding boxes, the pattern plates and ore boxes act as equipment but sand cores and moulds do not exactly fall in the same category, being articles which temporarily come into existence at a particular stage of manufacture of valves and cocks.

40. The appellants have already given an affidavit that these sand cores and sand moulds get destroyed during use and are neither sold nor are saleable in the market and no evidence has been produced to the contrary. Reference to an exemption notification in this context and Board's clarifications/instructions on this point therefore does not help the cause of the department. The fact that moulds and moulding patterns for metals fall under 8480.30 also does not help the cause

of the department in the above context. Further in the context of the process of manufacture and the point noted by us regarding the stages of manufacture the whole question boils down to that of direct or indirect use of the chemicals in the process of manufacture of valves and cocks; And, we observe that there is nothing in the Modvat scheme which would bar the benefit being extended to such inputs which are indirectly utilised in the production of the final output.

41. Viewed from this angle the chemicals in question are required to be considered as inputs the use of which ultimately results in the manufacture of valves and cocks.

42. In respect of Appeals No. E/2791 to 2794/88-NRB the learned counsel filed a chart dated 19-4-1991 for the sake of convenience showing the number of items in dispute and the relevant appeal numbers.

43. The learned DR stated that regarding Item No. 1 PVC film he is not pressing because it is used as a packaging material.

44. As regards Items 2 to 10 they are all inputs which are used for the manufacture of sand cores/moulds. Hence the arguments advanced in Appeal Nos. 312-317/88-NRB may be taken into account.

45. The learned counsel stated that in so far as the second item - Phenol Formalding Resin is concerned, the department itself has accepted that deemed credit was available in respect thereof, against production of duty paying document as evident from the adjudicating order No. 46-48/AC/D/90, dated 28-6-1990, a copy of which is produced.

He further submitted that in respect of the remaining items the same arguments advanced in the appeals 312-317/88-NRB may be taken into account.

46. We observe that as regards PVC films (Item No. 1 in Annexure II dated 19-4-1991), the department is not pressing the appeal. As such the order of the Collector (Appeals) is confirmed in so far as it relates to this item.

47. As regards Item No. 2 in Annexure II we find that the learned counsel is correct in pointing out that the Assistant Collector has himself accepted in his order No. 46-48/AC/D/90, dated 28-6-1990/10-8-1990 that Modvat credit is admissible in respect of this input. However, this by itself was not sufficient because the Order is cited in AC level order and no reasons have been given for passing this order whereas the impugned order in appeal has been passed by the Collector (Appeals) and at Executive Collector's level an appeal has been filed against the order of the Collector (Appeals) in so far as it relates to this item. In view of these circumstances, it cannot be said that the department as such had accepted availability of deemed credit in respect of this item. Hence, we have to proceed on the basis that the Department is aggrieved of the impugned order in respect of this item.

48. However, at the same time we notice that both the sides have referred to their respective submissions advanced in the Appeals No.312 to 317/88-NRB.49. Hence in respect of Items No. 2 to 10 we see no reason to interfere with the order of Collector (Appeals) for the reasons recorded in paragraphs 39 to 41 above and the ratio of our observations therein.

50. With the above observations and orders, all the 10 appeals as well as the Cross Objections are disposed of.

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