Jhalani Tools (i) Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-24-1993

Reported in : (1994)(70)ELT788TriDel

Appellant : Jhalani Tools (i) Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The issue for determination in the above 4 appeals is the eligibility or otherwise of grinding belts and grinding wheels used by the appellants in the manufacture of handtools to the benefit of modvat credit in terms of Rule 57A of the Central Excise Rules, 1944.

2. The appellants are manufacturers of handtools such as spanners, wrenches, pliers, etc. falling under Chapter 82 which products are obtained essentially by forging, and after forging and trimming, they emerge with sharp edges. Emery/abrasive materials are used in the form of Grinding Belts/Emery Belts and Grinding Wheels without frame works are classifiable under Chapter 68, are used to smoothen the sharp edges of the handtools in order to make them marketable. The appellants had filed declarations under Rule 57G for the purpose of availing credit of duty paid on grinding wheels and grinding belts, declaring these two items as raw materials for the manufacture of handtools. As it appeared to the Department that the two items were not raw materials for the manufacture of handtools as the grinding wheels were used to make the surface of the tools smooth and grinding belts were fixed to the machines on which grinding wheels

were fitted and neither item form part of the end-product, show cause notices were issued to the appellants proposing disallowance of modvat credit under Rule 57-I and proposing imposition of penalty. The appellants replied to the show cause notice both on the merits of the matter as well as submitting that the demands were barred by limitation as the extended period of limitation of 5 years was not available to the Department in view of the letter of the appellants dated 24-6-1987 wherein the exact nature of the items, manner of utilisation as well as the machines on which these were used had been explained to the Department. The Department rejected the contentions of the assessees, holding that the grinding wheels and grinding belts were not in the nature of inputs but they were equipments, apparatus, tools or appliances and, therefore, modvat credit was not available on these items. He also held that the extended period was applicable in view of the fact that the appellants had mis-declared the items as raw materials while in fact they were not raw materials. Hence these appeals.

3. We have heard Shri R. Swaminathan, learned Consultant and Shri A.K.Singhal, learned DR.Appeal No. Dutyamount Penalty Period Date of show cause notice1. E/ 1881/91 4,49,644.19 30,000/- 3/87 to 2/89 15th Oct. 1990 8-11-19903. E/2101/91-NRB 41,330.76 9/89 to 10/89 19-3-1990 28-3-19904. E/307/92-NRB 3,14,924.50 2/90 to 7/90 16-8-1990 17-8-1990 5. The contention of the appellants is that the grinding wheels and grinding belts are in the nature of inputs as they are used in the manufacture of tools. The use of emery belt is identical to emery paper for smoothening the rough edges obtained on forging. Though use of the emery belt manually is also feasible, in most cases the movement is mechanical. For convenience in processing operations, abrasive grains are coated on a textile base which is in the form of a belt and upon use this belt requires frequent replacement. After grain shedding, the grinding belt is rendered a waste material and is disposed of as sweepings. Regarding grinding wheels the submission is that they are used for rough grinding i.e. rough tools are first evened out with the grinding wheel and for further closer finishing, grinding belts are used. Grinding wheels consist of abrasive material bonded together by moulding and the grinding wheel is mounted on to the grinding machine and is used for grinding of the rough edges. After use for some time its size get substantially reduced and the remants are disposed of as scrap. Therefore both items are consumed in the

manufacturing process.

It is not essential that the input or raw material should form part of the final product in order to qualify as an input for the purpose of Rule 57A. Alternatively grinding wheels and grinding belts are in the nature of consumables on which modvat credit is admissible.

6. The next contention of the learned Consultant is that modvat credit has been disallowed for the period between March '87 to February '89 and the, show cause notices dated 15-10-1990, 8-11-1990 and 21-11-1990 are, therefore, entirely barred by limitation, being beyond the normal period of limitation of six months from the date of availment of Modvat credit. There has been no suppression on the part of the appellants and in fact the appellants had, in response to a letter of the Department dated 26-5-1987 informing that modvat credit has been wrongly availed of by the appellants with respect to grinding wheels as these are actual attachments to machinery for grinding the finished products, clarified the position and described in detail the exact nature and application of these materials in the manufacture of hand tools. He submits that in appeal No. E/2100/91 and 2101/91 part of the demand is barred by limitation.

7. In reply the learned DR submits that Modvat credit has been rightly disallowed as grinding wheels and grinding belts are not raw materials for the manufacture of hand tools and they did not form part of the end product. The grinding wheels are used in pedestal grinders and snagging grinders for the purpose of rough grinding process and grinding belts were used on belt grinding machines for the purpose of fine grinding process and, therefore, they were in the nature of equipment, apparatus, tools or appliances excluded from the benefit of modvat credit in terms of the explanation to Rule 57A(1). As the appellants misdeclared grinding wheels and grinding belts as raw materials, the extended period of limitation has been rightly invoked by the department, especially in view of the fact that even after the dispute has been raised by the Department in its communication of 26-5-1987 the appellants continued to take modvat credit on these items.

8. We have heard both sides and carefully considered their submissions.

Grinding wheels are fixed on to machine and used for smoothening the surface of the tools. The wheels are fitted on to the pedestal grinders/snagging grinders as can be seen from the catalogue of the Bach Grinding Machine. In the case of Straw Products Ltd. v. Collector of Central Excise & Customs, Bhubaneshwar - 1992 (19) ETR 545, the Tribunal has expressed the view that parts of machines which are used in relation to the manufacture of final products are also eligible to the benefit of modvat credit. Relevant paragraphs [18A and 19] of the decision are reproduced below : In the present appeal, the purpose served by the grinding wheels is the smoothening of the surface of the hand tools. Therefore, the grinding wheels are to be treated as parts of mahcinery used in relation to the manufacture of final products. Applying the ratio of the Straw Products Order, we hold that grinding wheels are inputs for the manufacture of hand tools, eligible to the benefit of modvat credit under Rule 57A.9. Regarding the other input i.e. grinding belts we are of the view that this item is eligible to the benefit of modvat credit for rough grinding process. Abrasive grains are coated on a textile base which is in the form of a belt which requires frequent replacement during usage.

After grain shedding the grinding belt is regarded as a waste material and is disposed of as sweepings. In the case of Jayshree Timber Products reproted in 1992 (62) E.L.T. 235, the ERT of the Tribunal has extended the benefit of modvat credit to aloxide paper (Abrasive paper for polishing plywood) the Bench relied upon its earlier view in the case of CCE v. Andaman Timber Industries Ltd. Following the ratio of the two case law cited supra we hold that the grinding belts are entitled to the benefit of modvat credit.

10. As we have held that modvat credit is available to both the items in dispute, we are not called upon to record any finding on limitation.

11. In the result we hold that grinding wheels and grinding belts are inputs used in relation to the manufacture of final products namely handtools, eligible to modvat credit under Rule 57A of the Central Excise Rules, 1944. We set aside the impugned orders and allow the appeals with consequential relief, if any, due to the appellants.

Sd/- 12. With due respects to Hon'ble Judicial Member my views and orders in the matter are as follows : 13. I observe from the catalogue filed by the appellant and the submissions made before us that both grinding belts and grinding wheels are integral components, replaceable parts of the belt grinding machine and DOPPELSCHLEIFMASCHINE respectivly shown in the pamphlet. It is each of these machines as a whole which is used for grinding of the items manufactured by the appellants. It is therefore incorrect to talk about belt or the wheel in isolation and claimed that they to have been used for the manufacture of the item in question. That some other items like 'ragemall' are directly used for grinding or polishing surfaces is not the point. The question before us is that of the components of grinders used by the appellants as they are in their entirety. In fact the pamphlet shows grinding wheels as accessories.

14. In the circumstances I could understand if it could be said that the grinding belts and grinding wheels are required to be used in the aforesaid machines and replacements are required for the purpose of maintenance and proper operational use of these machine or the functions of the machines. It is in this context that they are required to be replaced when worn out - for the purposes of the machine. In the circumstances they cannot be considered as raw material or inputs required for the manufacture of hand tools, spanners, wrenches, pliers, etc said to be the declared products of the appellant. In view of the above position, in my opinion, the case is distinguishable from that of Straw Products and Andhra Pradesh Paper Mills (supra) and so also the Gujarat Alkalies and Chemicals and the Coninco Binani Zinc Ltd. v.Collector of Central Excise or Jaishri Timber Products cited before us and mentioned above. If noting the observation of the Special Bench in this case that the "items ...used in relation to the machines and not used in the manufacture of final products" are not eligible to MODVAT.15. From the above discussion, it is clear that the appellants had wrongly declared these items as raw materials.

16. I also observe that this declaration of the appellants had not been accepted by the Department and the Superintendent of Central Excise had objected to their declaration, dated 6th March 1987 as early as 26-5-1987 vide his letter No. IAR 269/87/398, dated 26-5-1987. In this matter the Superintendent of Faridabad

Range has stated as follows : "It has been observed that your firm has claimed MODVAT credit in respect of grinding wheels as inputs to the tune of Rs. 999/- vide Entry No. 401, date 7-3-1987 in Chart No. 1 whereas it is actuallly attachment to the machinery for grinding the finished proudcts, ie.

hand tools. It appears that no modvat on such inputs under Rule 57A is admissible.

Please adjust in the credit account or account current immediately the amount of Rs.999/- wrongly taken as credit. Particulars of deposit may please be intimated immediately." 17. The appellants had also replied to it vide their letter, dated 24th June 1987 at Annexure 5. In other words, the appellants have been put on notice and had been clearly told that no MODVAT on such inputs was admissible.

18. Therefore their continuing to avail MODVAT after this communication, was clearly erroneous.

19. Their reply shows that they did not agree with the interpretation of the officer. However, irrespective of their own views they were required to keep the official direction in mind. They should have at least taken the precaution of showing it as tentative or under protest and represented to the next higher authority and obtained the final orders of the proper officer beforehand. In the circumstances, although a formal show cause notice for adjudication purposes has been issued subsequently on 15-10-1990 the appellants could hardly claim that their action was not a deliberate act of mis-declaration or wrongful availment. Hence the extended period of time is available to the Department and the Departmental action is not time-barred.

20. In view of the above position I reject the appeals.

Sd/- 21. In view of the difference of opinion between the Hon'ble Judicial Member and the Vice President, the matter is submitted to the Hon'ble President for reference to a third member on the following point: "Whether the items in question were inputs in the nature of raw materials and therefore, eligible for MODVAT benefit or they were merely items required for operation of the machines and could not be considered as inputs in the nature of raw material or otherwise and were not eligible for MODVAT." Sd/- Sd/-(Jyoti Balasundaram) (S.K. Bhatnagar) Judicial Member.

Vice President.Dated 19-8-1993 Dated 18-8-1993 "Whether the items in question were inputs in the nature of raw materials and, therefore, eligible for MODVAT benefit or they were merely items required for operation of the machines and could not be considered as inputs in the nature of raw material or otherwise and were not eligible for MODVAT." 23. Heard both sides, when they reiterated the arguments before the Double Member Bench. The issue involved is the eligibility to MODVAT in respect of: 24. The Grinding Wheels are fixed on to machine and used for smoothening the surface of the tools. The wheels are fitted on to the pedestal grinders/snagging grinders as can be seen from the catalogue of the Bach Grinding Machine. In the case of Straw Products Ltd. v. CCE - reported at 1992 (19) ETR 545, the Tribunal has expressed the view that the parts of the machines which are used in relation to the manufacture of final products are also eligible to the benefit of Modvat Credit.

25. Regarding the Grinding Belts, abrasive grains are coated on a textile base which is in the form of a belt.

26. The learned Hon'ble Member (J) has sought to allow the benefit of Modvat in respect of Grinding Wheels by following the decision of the Tribunal in the case of Straw Products Ltd. v. CCE (supra). The said decision appears to have been based on two grounds. First, the said Grinding wheels are only parts of machinery and not 'Machinery' which alone is excluded from the purview of Rule 57A and secondly the use of such wheels is in the manufacturing process and not in the manufacturing machinery.

27. As regards the Grinding belts Hon'ble Member (J) has proposed to allow the benefit of Modvat following the decision in the case of Jaishree Timber Products v. CCE - reported at 1992 (62) E.L.T. 235 (T), in which the East Regional Bench of the Tribunal has extended the benefit of Modvat credit to Aloxide paper (abrasive paper) for polishing plywood.

28. Hon'ble Vice President has proposed to deny the Modvat for both the 'Inputs' namely, Grinding Belts and Grinding Wheels on the ground that both of them are integral components or replaceable parts of the belt grinding machine and DOPPELSCHLEIFMASCHINE respectively. He has observed that each of these machines as a whole is used for grinding of the items manufactured by the appellants and that it is, therefore, incorrect to talk about the belt or the wheel in isolation.

29. The point referred to me is whether the items in question were 'Inputs' in the nature of raw materials. The point regarding the scope of the term 'Raw material' has been succinctly dealt with by the Supreme Court in the case of CCE v. Ballarpur Industries Ltd. - reported at 1989 (43) E.L.T. 804 (SC). In that case the Supreme Court has observed "The ingredient goes into the making of the end-product, in the sense that without its absence the presence of the end-product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilisation is in the manufacturing process as distinct from the manufacturing apparatus." [Emphasis supplied] 30. The ratio of this decision appears to be that before an input could be regarded as "Raw material" the same should not only be an essential ingredient for the making of the end-product but secondly its use should be in the manufacturing process as distinct from the manufacturing apparatus.

31. As observed by the Hon'ble Vice President, the Grinding Belts and Grinding Wheels are integral components or replaceable parts of the Belt Grinding Machine and that DOPPELSCHLEIFMASCHINE respectively as shown in the pamphlet. Rule 57A proviso excludes from the purview of Modvat not only the machine but any apparatus or equipment. It would do violence to the English language to say that the Grinding Wheel and the Grinding Belts are not in the nature of manufacturing apparatus but that these are in the nature of 'raw materials' utilised in the manufacturing process. Both on factual consideration and applying the ratio of the Supreme Court decision (supra) I am firmly of the view that the grinding wheel as well as grinding belts are in the nature of manufacturing equipment and are not in the nature of essential ingredients used in the "manufacturing process" as distinct from 'manufacturing apparatus'.

32. I, therefore, agree with the Hon'ble Vice President that the Modvat Credit is not admissible to the said items as these have been wrongly declared as "raw materials" the longer period has been rightly invoked.

The appeals, are therefore, liable to be rejected as proposed by the Hon'ble Vice President.

In view of the majority opinion, it is held that modvat credit was not admissible and the longer period of time has been rightly invoked. The appeals are therefore, rejected.