Collector of Central Excise Vs. Lipi Data Systems

Collector of Central Excise Vs. Lipi Data Systems

SooperKanoon Citation : sooperkanoon.com/7543

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-16-1994

Reported in : (1994)LC122Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Lipi Data Systems

Judgement :

1. The admissibility or otherwise of Modvat credit in respect of Ribbons used in relation to the manufacture of final product 'Line Printers' is the issue for determination in this appeal filed by the Department.

2. The respondents herein filed a claim for grant of Modvat credit on certain inputs, including ribbons for use in or in relation to manufacture of their final product namely Line Printers under Rule 57H of the Central Excise Rules, 1944 vide their letter dated 17-4-1987 and claimed credit on Countervailing duty paid by them on the stock of inputs as on 1-3-1987. The Modvat credit was extended to all the inputs except ribbons on the ground inter alia that ribbons had not been declared in the declaration filed in terms of Rule 57G and that ribbons which were used captively in line printers, fell for classification under Heading 9612.00 of the Central Excise Tariff Act, 1985 and exempt from duty under Notification No. 217/86, dated 2-4-1986 and according to Rule 57D, Modvat credit was not available if the final product was exempted.

3. The Collector (Appeals) set aside the findings of the Assistant Collector and extended the facility of Modvat credit on ribbons on the ground that they are ultimately used in the manufacture of line printers which is a final product cleared on payment of duty. Hence this appeal by the department.

4. The learned JCDR Shri MM. Mathur contends that the line printer is complete and marketable without the ribbon being fitted to it and the ribbon is an accessory and not an input eligible to the benefit of Modvat credit and relies upon the order .of the Tribunal in the case of Wipro Infotech Ltd. v. Collector of Central Excise, Bangalore reported in 1994 (69) E.L.T. 82 in support of his argument.

5. The learned Counsel for the respondents, Shri Uday Joshi submits that the line printer cannot function without the ribbon and is designed for exclusive use in conjunction with the line printer which is not marketable and complete without the ribbon and therefore, ribbons are inputs used in relation to the manufacture of Line Printers and entitled to Modvat credit. In support of his contention, he cites the order of the Tribunal in the case of Jayshree Industries v.Collector of Central Excise reported in 1993 (63) E.L.T. 492 in which Modvat benefit was held to be admissible for dry battery cells fitted to quartz clocks and time pieces being essential components to make the final product operational and marketable not an accessory therefor. He also relies upon the order of the Tribunal in the case of Collector of Central Excise v. Swaraj Mazda reported in 1993 (68) E.L.T. 258 in which Floor mats specifically designed for use in particular types of Motor vehicles and normally supplied with it, have been held to be inputs used in relation to the manufacture of light commercial vehicles and eligible to Modvat credit under Rule 57A. He also submits that the ribbon is sold with line printers and is essential for marketability of the line printers. He urges that in view of conflicting orders of the Tribunal on this issue, i.e. as to whether an accessory is also to be considered as an input used in or in relation to the manufacture of the final product, the matter may be referred to a Larger Bench of the Tribunal.

6. We have given anxious thought to the submissions of both the sides and carefully perused the various citations. We find that in the case of Jayshree Industries, the West Regional Bench has taken the view that inputs which go up to

the stage of ready for delivery at the factory gate, may have to be given the credit and this is also in line with the law as per the ratio of the decision of the Apex Court in the case of East End Paper Industries reported in 1989 (43) E.L.T. 201. The reasoning of the department that it is only inputs which are required in the course of manufacture of quartz clocks and not the battery cells which are required only to run the same, has been negatived.Collector of Central Excise v. Swaraj Mazda (supra), the Tribunal has held that the phrase 'in or in relation to the manufacture' has a very wide amplitude and includes not merely the processes and inputs essential to or incidental or accessory to the completion of manufacture but any item or process which is essential for making the final product marketable. The Bench followed the reasoning adopted in Jayshree Industries case.

On the other hand, the South Regional Bench has disallowed the claim for Modvat on ribbon used in relation to the manufacture of printers for computers on the ground that the manufacture of printers is complete without the ribbon being fitted on to it and is only an accessory and not a component part of the line printers. The Bench relied upon the judgment of the Hon'ble Supreme Court in the case of State of Uttar Pradesh and Anr. v. Kores India Ltd. reported in 1977 Vol. 39 STC 8 in coming to its conclusion. It appears that the order of the Tribunal in the case of Jayshree Industries (supra) was not brought to the notice of the Bench in the case of Wipro Infotech.

7. From the above, two schools of thought emerge on the question as to whether it is only those inputs which are required during the course of manufacture of the final products which are eligible to Modvat or whether all items provided normally with the final product ready for delivery at the factory gate would also qualify as inputs for Modvat purposes? 8. Our attention has also been drawn to the letter C. No. IV(16) Review/17/90/1779 dated 26-4-1994 addressed to the learned JCDR by the Collector in which it is stated that the appellants' invoices of line printers show that the ribbon is sold with the line printers.

9. In the light of the above, we place the papers before the Hon'ble President for reference of the matter to a Larger Bench.