Mukesh Engineering Industries Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-20-1995

Reported in : (1995)(79)ELT718Tri(Mum.)bai

Appellant : Mukesh Engineering Industries

Respondent : Collector of C. Ex.

Judgement :
1. This is an appeal against the Order-in-Appeal No. 468/94 [V-2 (Ch.

84)1024/93/1944], dated 6-5-1994 of the Collector of Central Excise (Appeals), Bombay 2. The facts of the case are that the appellants are manufacturers of plastic extrusion plant and they have declared Speed Regulator as one of the inputs classifiable under Chapter Heading 9032.80. However/the gate pass in respect of this showed the description as DC Drive though indicating classification under the same Heading 9032.80. Hence objection was taken that DC drive is not covered by Modvat declaration and hence credit in respect of duty taken on inputs is required to be reversed. The other issue in this appeal is that certain final products Vacuum tanks, hot stamping machines/inline marking machines/marking machines screw and barrels hopper loaders etc are not declared as final products. However, they have been cleared by debiting the duty from the Modvat account and hence the credit cannot be availed of in respect of these final products which are not declared. Though there were certain objections, they have been sorted out at the lower level and only the aforesaid two objections are now contested before us in this appeal.

3. After hearing both the sides, we find that the following facts are not disputed. DC drive is going into manufacture of the final product as an input and as a component. This is not disputed. The Tariff Heading of D.C. drive as per the gate pass received shows 9032.80 and the very same Tariff Heading has been given in the declaration against speed regulator. Hence the question to be looked into is whether the description speed regulator could cover the input received namely DC drive. The supplying manufacturer certifies that the D.C drive (Thristor Drives/Speed drives/speed regulators) are generally used for controlling the speed of the motors. The Collector (Appeals) has rejected this appeal on this issue by holding that in Mc-Graw Hill Dictionary of Scientific and Technical Terms, speed regulator can cover any device that maintains the speed of a motor or other device at a predetermined value or varies it in accordance with a predetermined plan. It is therefore not possible to conclude that two are one and the same. He however does not dispute that DC drive is a mechanism that controls the speed of the motor and in that sense it regulates speed of a motor. Though a speed regulator can cover other apparatus being not specific to the motor, it is a generic description covering the regulating device of the speed of any apparatus. Electric motor is an apparatus where electrical energy is converted into mechanical energy and when this device described as DC drive is controlling the speed of the motor, it cannot be said to be falling outside the purview of the description given in the declaration. It may be a matter of opinion whether the description could have been more specific. All the same, we cannot hold that their intention to avail of credit in respect of speed regulator of a motor has not been spelt out in the declaration. It is also necessary to point out that under Rule 57G of the Rules, the manufacturer is required to declare the inputs intended to be used in or in relation to the manufacture of the final product. This goes to indicate that the declaration based on their intention precedes actual receipts of the inputs. Hence certain amount of latitude is called for in applying the description given in the declaration vis-a-vis the description, under which the inputs are actually received. Going by this approach, we hold that the description "speed regulator" would cover DC drive and hence Modvat credit should not be denied in respect of this input.

4. As regards the allegation that certain final products are not declared, it is contended that all these items of final products allegedly not declared are parts of

plastic extrusion plant. They are reportedly classifiable under the same Tariff Heading 8477. If the final products not declared are not eligible for Modvat credit in respect of the inputs declared as per the Notification issued under Rule 57A or the inputs have not gone into the manufacture of these undeclared final products, the objection is valid. We allow the liberty to the department to verify on this aspect. If it is otherwise, merely because of non-declaration of the final products, Modvat credit is denied, they have to pay the duty on these final products from PLA, in which case, the credit gets restored in RG-23A to that extent for utilisation towards duty payable on the declared final product, in whose manufacture they are used. Hence it could only become an exercise of debit in PLA with the simultaneous credit in RG 23A, not having any revenue effect. In that view, the objection can be technically valid but cannot extinguish the credit earned on declared input, which can be utilised for duty payment towards declared final products.

5. The appeal is disposed of in the above terms, with consequential relief, where called for.