Collector of C. Ex. Vs. Kakkar Complex Steels Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-04-1995

Reported in : (1995)(79)ELT417TriDel

Appellant : Collector of C. Ex.

Respondent : Kakkar Complex Steels Limited

Judgement :
1. The Collector of Central Excise, Chandigarh has filed this appeal on the ground that Collector (Appeals) had wrongly held that modvat credit was admissible on oxygen and acetylene gas used for carbonising inside of the moulds to get good finish for steel ingots and that such moulds by themselves are apparatus/equipment used for making steel ingots.

2. The facts in brief are that the respondents are engaged in the manufacture of steel ingots and were availing modvat credit in terms of Notification No. 177/86, dated 1-3-1986 as amended; that during the period from April, 1986 to October, 1987, they took credit of duty paid on oxygen and acetylene gas, ingots, moulds, ceramic and refractory and other inputs under Rule 57A of the Central Excise Rules, 1944, The Asstt. Collector, Central Excise confirmed the demand on account of modvat credit taken on oxygen, acetylene gas, ingots, moulds, ceramics and refractory. The Collector (Appeals) held that the credit was not admissible on ingot moulds, ceramics and refractory. The Collector (Appeals) however allowed the credit on oxygen and acetylene gas.

Against this order of the Collector (Appeals) allowing modvat credit on oxygen and acetylene gas, this appeal is before me.

3. Shri Y.R. Kilaniya, the ld. JDR appearing for the Revenue submitted that the Assistant Collector in his order had clearly pointed out that the oxygen and acetylene gas are used for painting inside of the moulds to get good surface of the steel ingots and that these goods do not qualify as input as they do not form part of the final product. The ld.JDR submitted that the Asstt. Collector had clearly held that since the oxygen and acetylene gas were used for maintenance of ingot moulds which is an apparatus, the same cannot by any stretch of imagination be treated as inputs used in relation to the manufacture of the end-product and no modvat credit can be allowed on these gases. The ld.JDR also referred to the order passed by the Collector (Appeals) in which the Collector had held that "regarding the admissibility of modvat credit on oxygen and acetylene gas used as a source of heat and flame generation for welding and cutting of metals. This cannot be considered as simply in the process of manufacture. Accordingly, the modvat credit on oxygen and acetylene gas used as for cutting runners and risers in castings and welding purposes and similar process of casting and welding is permitted. In this matter, he places reliance on the Ministry's letter F. No. 267/108/89-CX. 8, dated 31-5-1990 and Trade Notice No. 68-C.E./90 issued by the Collector of Central Excise, Chandigarh". The Collector (Appeals) also held "in the light of the above discussion, I hold that ingot moulds, ceramics and refractory do not qualify for inputs and modvat credit is not admissible on these items; whereas it is admissible on oxygen and acetylene gas. The orders of the Asstt. Collector are modified accordingly". The ld. JDR submitted that the Assistant Collector in his adjudication order had clearly brought out that oxygen and acetylene gas were used for carbonising of moulds to get good finish for steel ingots; that since these gases were used for moulds which itself are an apparatus and equipment used for making steel ingots. There could not be any reason to infer that these gases were being inputs in terms of Rule 57A; that these are used for maintenance of ingot moulds. The ld. JDR therefore, submitted that these gases did not qualify to be eligible for modvat credit in terms of the Ministry's letter and Trade Notice referred to in the order passed by the Collector (Appeals). The ld. JDR reiterating the submissions made in the ground of appeal further submitted

that since these gases were used for maintenance of moulds which did not qualify to be inputs in terms of Rule 57A, no credit under modvat was admissible.

4. As no one appeared for the respondents in spite of the fact that notice of hearing was issued on 26-5-1995 and sufficient time was given to the respondents to make their appearance which they did not like to make. Therefore, I proceed to decide the case ex parte.

5. Heard the submissions of learned JDR and perused the evidence on record. On careful consideration of the submissions made by the appellants, I find that the Assistant Collector in his order-in-original had clearly brought about the fact that the oxygen and acetylene gas were used for carbonising inside of the moulds to get good surface of the steel ingots. The Collector (Appeals) in her order had held that the modvat credit on the oxygen and acetylene gas used for cutting, [runners] and risers in the castings and welding purposes and similar process of cutting and welding is permitted. This finding of the Collector (Appeals) is not relevant to the facts of the present case. In the instant case, the Asstt. Collector had clearly brought out that oxygen and acetylene gas were being used for carbonising of moulds and therefore, I hold that the findings of the Collector (Appeals) are wrong as they are based on presumption which is not applicable to the facts of the case before me. I find that what is being manufactured is ingot. I also find that oxygen and acetylene gas are being used for carbonising the moulds. No doubt, mould is an apparatus or equipment for keeping the moulds in proper condition and their maintenance is a different issue. Oxygen and acetylene gas is no doubt, for upkeep and maintenance of the moulds. Moulds are apparatus and equipment. The use of oxygen and acetylene gas is therefore, not as an input used in the manufacture or in relation to the manufacture of ingots and therefore, modvat credit on oxygen and acetylene gas will not be admissible in the instant case and I hold accordingly. On the question of non-applicability of the clarification in Ministry's letter dated 31-5-1990 and Trade Notice No. 68/C.E./90, I agree with the contention of the Revenue 6. In view of the above findings, the impugned order is set aside and the appeal is allowed.