Collector of Central Excise Vs. Pronts Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-10-1995

Reported in : (1995)(79)ELT419TriDel

Appellant : Collector of Central Excise

Respondent : Pronts Ltd.

Judgement :

1. This appeal has been directed against the order of Collector (Appeals). The Collector (Appeals) in her order had held as under :- "Admissibility of modvat credit on Oxygen gas used in relation to the manufacture of S.S. ingots is now a settled issue. I place reliance on CEGAT's judgment in case of Collector, Central Excise, Calcutta v. Hindustan Dev. Corporation, Hoogly reported in 1990 (47) E.L.T. 376 wherein benefit of modvat credit on oxygen gas is allowed when oxygen is used for cutting purpose. The issue stands settled in terms of Central Excise Collectorate, Chandigarh T.N. No. 68-C.E./90, dated 19-7-1990 wherein mod-vat credit on oxygen, acetylene gases, used for cutting or welding purposes is permitted to be availed.

In view thereof, I accept the appeal by setting aside the impugned order and by allowing consequential relief.

2. The facts in brief are that the respondents are engaged in the manufacture of ingots. They were availing modvat credit on inputs specified under Notification No. 177/86. The respondents filed a refund claim on account of the credit which would

have been admissible to them for use of oxygen gas during the period October, 1986 to July, 1988.

This refund claim was rejected by the Assistant Collector on the ground that the oxygen gas was used in cutting of scrap which was further used in manufacture of ingots. On appeal the Collector, Central Excise (Appeals) set aside the order of the Assistant Collector and held that the oxygen gas was used in relation to manufacture of ingots and that credit was admissible in terms of Trade Notice No. 68/90, dated 19-7-1990.

3. Shri Y.R. Kilaniya, the learned JDR appearing for the appellant submitted that Trade Notice No. 68/90, dated 19-7-1990, which has been relied upon by the Collector (Appeals) was not relevant to the issue of the present case; that the said Trade Notice related to cutting of runners and risers from steel ingots; that in the case before us, oxygen gas was not used for cutting of runners and risers from the ingots but was used for cutting of the raw material to be used for manufacture of ingots; that the process of cutting scrap cannot be stated to be in relation to manufacture of final products; that oxygen is a consumable item and is admittedly used for cutting scrap but it does not become entitled to the benefit of modvat credit on the ground because it is not used in or in relation to the manufacture of ingots; that cutting of scrap and cutting of runners and risers of ingots were two different aspects. In support of his contention, the learned JDR cited and relied upon the decision of the Tribunal in the case of M/s.

Jai Bharat Steel Co. reported in 1990 (49) E.L.T. 527 and Collector of Central Excise v. Heavy Engineering Corporation Ltd. reported in 1990 (49) E.L.T. 531. Summing up his arguments, the ld. JDR submitted that oxygen was in the nature of tool and not in the nature of an input used in the manufacture of or in relation to the manufacture of ingots. He therefore, prayed that the appeal may be accepted.

4. No one appeared for the respondents. From the record, I find that the notice for today's hearing was issued to the respondents on 26-5-1995 They have neither presented themselves nor have they requested for adjournment of the case. As the case pertains to the year of 1991, I decide to proceed with the case ex parte.

5. Heard the submissions of the learned JDR and perused the evidence on record. On careful consideration of the case, I find that the admitted position is that the oxygen was used for cutting scrap into small pieces. The scrap was further used for manufacture of ingots. Now, whether the use of oxygen for cutting of scrap can be termed as used in relation to the manufacture of the ingots. For deciding this issue, the learned JDR cited and relied upon the decision of the Tribunal in the case of Jai Bharat Steel Co. cited (supra). In this case, the Tribunal had held that oxygen gas used for ship breaking was not eligible for modvat under Rule 57A. The relevant para of the Tribunal's order is reproduced below: "15. We are also aware of the decision taken by us in the case of M/s. Mukund Iron and Steel Works Ltd. v. CCE, Bombay-Ill, in Order No. 115/89-WRB, dated 5-12-1989 (in Appeal No. E/87/89 Bom). The issue considered there related to extension of Modvat credit in respect of acetylene gas used for separating the runners and risers attached to the casting, as they are taken out from the mould. We allowed the availment of the Modvat credit in respect of acetylene gas mainly because it could not be equated as a tool as held by the department and it is used directly in the manufacture of casting and that without separation of runners and risers, casting of the required size and shape cannot come into existence. We also treated the acetylene gas as a consumable item used in relation to the manufacture of the final product "casting" and since there is no bar in extension of Modvat credit in respect of consumable item, we allowed the same in respect of acetylene gas. The question would arise whether similar treatment could be meted out to oxygen gas used for breaking the ship. In the Modvat scheme, ship is specified as an input against the final product of scrap, obtained as a result of breaking of ship. Oxygen gas is admittedly used in relation to the breaking of this input namely, the ship and cannot be said to be used in or in relation to the manufacture of final product - namely scrap of various iron or steel items. Usage of oxygen gas along with the LPG through the medium of gas cutter is for the purpose of breaking the ship and cannot be construed to have been used in or in relation to the manufacture of final product. If the input (viz.

ship) is required to be disintegrated and for that purpose gas cutting is resorted to, it only amounts to usage for proper dressing of input to the required level of disintegration and cannot be said to have been responsible or used in relation to bringing out a particular final product. We, therefore, conclude that though oxygen gas is also a consumable item and used for cutting, the nature of use being what it is. as discussed above, does not get the benefit of Modvat credit mainly on the ground that it is not used in or in relation to the manufacture of the specified final product but is used in or in relation to breaking of an input - namely the ship." The reliance placed by the Collector (Appeals) on the ratio of the decision of the Tribunal in the case of Collector, Central Excise, Calcutta-II v. Hindustan Dev. Corporation reported in 1990 (47) E.L.T.376 appears to be misplaced inasmuch as the facts in the two cases are different. The Collector has also relied upon Chandigarh Collectorate's Trade Notice No. 68/90, dated 19-7-1990 wherein modvat credit on oxygen and acetylene gases used for cutting and welding purposes is permitted.

On perusal of the facts, I find that oxygen in question was used for welding purposes and for cutting of runners and risers of ingots and therefore the clarification contained in the Trade Notice will not be applicable to the present case. I also observe that [in] the Collector of Central Excise v. Ballarpur Industries Ltd., 1989 (43) E.L.T. 804 (SC) the Hon'ble Supreme Court in para 7 held as under : "7. We also find no substance in the contention of Sri Ganguly that the process in which the sodium sulphate was used, was anterior to and at one stage removed from the actual manufacture of paper. Sri Sorabjee's answer to this contention is, in our view appropriate.

That apart the following observations in Collector of Central Excise v. Eastend Paper Industries Ltd. cited by Sri Ganguly himself is a complete answer : "...Where any particular process, this court further emphasised is not integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression 'in the manufacture of goods'...".

A perusal of the above rulings shows that particular process should be integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, Articles required in that process, would fall within the expression 'in relation to the manufacture of goods.' Examining the use of oxygen in the context of the above rulings, I have to see whether without the use of oxygen in the process of manufacture of ingots whether it would be commercially inexpedient. For answering this question, I have to examine where the process of manufacture of ingots starts; does it start with the cutting of scrap into small pieces or does it start with the melting of the scrap. Perhaps. cutting of scrap in small pieces is not relevant in all cases and therefore, the process of cutting of scrap by using oxygen into small pieces cannot be termed a process integrally connected with the process of manufacture of ingots. In this view of the matter. oxygen cannot be termed as used in relation to the manufacture of ingots. In the case of Gujarat Alkalies and Chemicals Ltd. reported in 1991 (41) E.L.T. 424, this Tribunal had held that there is no dispute that it is essentially required in the manufacture of caustic soda lye and also in that view it is used in relation to the manufacture of caustic soda lye. Now the question for examination before me whether the oxygen is essentially required in the manufacture of ingots. A clear answer will be 'No'.

6. Having regard to the above decisions and the other evidence on record, I find that oxygen gas used for cutting bigger scrap pieces into smaller ones was not a part of the integrated process nor was it essentially required in the process of manufacture of ingots and therefore, it cannot be said that it was used in relation to the manufacture of ingots. Therefore, I hold that no modvat credit will be available to the respondents.

7. In view of the above findings, the impugned order is set aside and the appeal is allowed.