

Concord Control Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-27-1996

Reported in : (1996)(84)ELT329TriDel

Appellant : Concord Control

Respondent : Collector of Central Excise

Judgement :

1. The appeal is directed against the order dated 29-4-1994 passed by the Collector of Central Excise (Appeals), New Delhi. The appellants, herein, are availing of modvat credit on several inputs. They have initially filed a declaration under Rule 57G for the purpose of availing of modvat credit on the inputs for which they declared certain materials as inputs for the purpose of being used in the manufacture of various final products giving also tariff headings of these inputs. On scrutiny of the R.T. 12 returns, it was found by the Assistant Collector that the appellants, herein, had availed of modvat credit on inputs which had not figured in their declaration under Rule 57G. Proceedings were initiated for the recovery of the amount of irregularly availed modvat credit and the jurisdictional Assistant Collector by his order dated 24-11-1993 demanded duty of Rs. 30,176.73 under Rule 57-I of the Central Excise Rules and also imposed a penalty of Rs. 500.00 on the items, herein, under Rule 173Q of the Central Excise Rules for violation of the Rule 57G for having not filed appropriate declaration. The Assistant Collector's order was upheld in appeal.

2. Shri Ashok Mehta, Id. Counsel for the appellants, submitted that the declaration filed by the appellants, herein, gives the particulars of the inputs although in the case of some of them like switches, they have not given specific description of the goods. However, the terms "switches", according to the Id. Counsel should be taken to cover also snap switches, which the department says is an item not included in the declaration. Similarly, they have also given general description of the input material with the corresponding tariff heading thereof. In such a situation, the Id. Counsel pleaded that the ratio of the Tribunal decision in the case of Collector of Central Excise v. Shri Ramakrishna Steel Industries reported in 1991 (56) E.L.T. 456 (Tri.) should be applied. In that decision, the Tribunal has noted the departmental instructions regarding the declaration so long as the description and sub-heading for the input as also final product is available in the declaration, the benefit of modvat credit can be allowed if it is established that the inputs received have been for the manufacture of the final product. In this case also, the Id. Counsel urged that the inputs are duty-paid and have been used in the manufacture of the final product.

3. Shri R.A. Sheikh, Id. D.R. pointed out that the description of the input generally and even by tariff heading, does not tally in respect [of] Body Time Delay relay base which is an electrical item under Chapter 85, but the appellants have declared this as cast zinc article under Chapter 79. So also the Id. D.R. pointed out brass screws are falling under Chapter 74 and are different from screws of Chapter 73 as declared by the appellants. Apart from this, it is admitted position that inputs like aluminium anodised name plates, moulding powder and electrical contacts have not been declared at all even in general manner.

4. On a careful consideration of the submissions made by both the sides, it is clear that only those inputs which are included in the declaration under Rule 57G of the Central Excise Rules will be eligible for modvat credit. It is a necessary condition for the availment thereof. Therefore, straightaway, in respect of inputs like aluminium anodised, name plates, moulding powder, electrical contacts, these do not at all figure in the declaration by the appellants and as such the appellants have rightly been held to be ineligible to avail of modvat credit on these inputs. So far as item switches are concerned, the general description of the item as switches

should be extended to cover snap switches and Tariff Heading 8536 of the C.E.T.A. 1985 is also broad enough. However, this principle cannot be extended in the case of brass screws which actually fall under Chapter 74 and these have to be declared specifically because screws otherwise fall under Chapter 73.

The declaration of relay base which falls under Chapter 85 Heading 8538.00 merely as cast article of zinc under sub-heading 7907.90 does not really answer the purpose of declaration under Rule 57G. However, in this case also the benefit can be extended to the appellants because of the fact that it is seen from the Gate Pass under which these were received, description of the tariff heading is the same as has been declared by the appellants for these articles. This reasoning is also strengthened by the fact that the duty-paid nature of these inputs is not doubted and further the fact also remains that these materials have been used in relation to the manufacture of the final product. It is in this context, the S.R.B. decision cited by the Id. Counsel becomes relevant. The departmental instructions noted by the Tribunal therein were to the effect that if statutory records maintained by the assessee shows that inputs have been received and used in the manufacture of the final product and declaration giving broad description chapters have been filed, the credit should not be disallowed. Therefore, in the present case, for the reasons aforesaid in respect of aluminium anodised name plate, moulding powder, electrical contacts and brass screws, the modvat credit cannot be extended to the appellants and it can be allowed for rest of the inputs which are in dispute in this appeal. Further, having regard to the nature of the offence, the penalty on them is not justified and it is set aside. The appeal is disposed of in the above terms.

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