Leading Engineering Works Pvt. Vs. C.C.E.

Leading Engineering Works Pvt. Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/9218

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-01-1996

Reported in : (1996)(84)ELT278TriDel

Appellant : Leading Engineering Works Pvt.

Respondent : C.C.E.

Judgement :

1. By the present Appeal, the appellants have assailed the order of the learned Collector (Appeals) disallowing Modvat credit on tracing system on the ground that no declaration was filed for this input.

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of Lathe Machine. For manufacture of Lathe Machine, the appellants procured from the market a number of components and parts. In the declaration filed under Rule 57G, the input was described as "15. Hydraulic Copy Turning Attachment with or without Power Pack and accessories of all types and sizes" and the sub-heading for classification of this item was indicated as 8466.00. The appellants got from M/s. Ditamir Hycon Limited as an item described in the gate pass as Hydraulic Tracer Model Hitrace 7090 with turret. The Department alleged that no declaration of this item was furnished by the appellants. The appellants contested that hydraulic tracer was covered by the description of the goods against Serial No. 15 and supported their contention by producing the certificate from the manufacturers as also the technical literature on the goods and also a Chartered Engineer's certificate. It was contented by the appellants that the

description furnished by them in the declaration filed under Rule 57G is a comprehensive description and in view of the technical literature, trade understanding and the Chartered Engineer's certificate, hydraulic tracar is fully covered by the description furnished against Serial No.15 of the declaration. The lower authorities, however, did not agree with the contentions of the appellants on the ground that the item 'hydraulic tracer' and 'hydraulic copy turning attachment' are different because the same items have only limited function and other items have more than one function and therefore, the items are distinct and different and therefore, the lower authorities have held that hydraulic tracer was not declared in the declaration on 31-3-1993 and therefore, Modvat credit was not admissible.

3. Shri V.K. Gupta, the learned Counsel appearing for the appellants first referred to the declaration stating that the declaration was based on the trading understanding of the product; that the declaration was wide enough to encompass hydraulic tracer; that the function of hydraulic tracer can be termed as hydraulic copying. He referred to technical literature and catalogues of various suppliers of the product and submitted that though the products were described differently by different manufacturers and though some of the functions were common and some functions were additions in respect of some products, however, having regard to the fact that trade understanding of the same product or similar product was different and that the declaration was wide enough and therefore, hydraulic tracer on which Modvat credit was denied to the appellants by the Department was fully covered by the declaration. In support of his contention, the learned Counsel cited and relied upon the decision of the Tribunal in the case of Bihar Caustic Chemicals Ltd. reported in 1993 (64) E.L.T. 332 (Tribunal). He also referred to the decision of the Tribunal in the case of Park Products reported in 1991 (36) ECR 614. In support of his contention, the learned Counsel also relied upon the decision of the Tribunal in the case of Meena Engineering Works reported in 1995 (65) ECR and [Asian Tubes (P) Ltd. v. Collector] reported in 1995 (10) RLT 648 (NRB). He also relied on the Trade Notice No. 8/CE/Misc-4/9 dated 2-4-1992 stating that the Delhi Collectorate in this Trade Notice clarified that so long as the products and its classification in the relevant Chapter is correct, Modvat credit will not be disallowed merely on the ground that there is a difference in the nomenclature of the product due to trade practice in different parts of the country.

The learned counsel submitted that in view of the case-law, the technical literature and the expert opinion as also the clarification issued by the Delhi Collectorate, their product 'Hydraulic Tracer Model Hitrace' was covered by the description given in the declaration filed on 31-3-1993. He therefore, prayed that in view of the above submissions, the Appeal may be allowed.

4. Shri R.A. Sheikh, the learned JDR appearing for the respondent submitted that Hydraulic Tracer Model Hitrace is a different product, has different function and different technical specifications and therefore, was not covered by the description given in the declaration.

He submitted that for the purpose of Rule 57G, the description of the goods should be such as may be clearly identified. He submitted that gate pass described the goods clearly, therefore, there was no question in verifying trade practices. He therefore, submitted that even a look at the technical literature will show that the items manufactured by various manufacturers have some functions identical but other functions are as additions or different. The learned DR therefore, submitted that the item 'Hydraulic Tracer Model Hitrace' was not included in the declaration and that the lower authorities have rightly denied the Modvat credit on this item.

5. Heard the submissions of both sides. The short question for determination before me is whether the item 'Hydraulic Tracer Model Hitrace' is covered by the description reading as 15. Hydraulic Copy Turning Attachment with or without Power Pack and accessories of all types and sizes". Now the basic question is, what is Hydraulic Tracer? For this purpose we have to examine the technical literature. The item Hydraulic Lathe Tracer for copy turning, copy boring and face copying has been described as power pack having level indicator with temperature read out, special isolator valve for pressure gauge and sintered filters'. This broad description when compared with the item given in the declaration, I find that the item Hydraulic Lathe Tracer is for copy turning, copy boring and face copying. I observe that Hydraulic Copy Turning Attachment is described in the declaration and though Hydraulic Lathe Tracer has an additional function of copy boring and face copying. These functions will also be falling within the description given in the declaration.

Para 6 missing in certified copy : Ed. 7. The learned Counsel for the appellants also referred to the expert opinion given by the Chartered Engineer. In this certificate, the Chartered Engineer after verification from the catalogues clarified that Hydraulic Tracer Model Hitrace manufactured by M/s Ditamir Hycon Limited, copy turning attachment manufactured by M/s Pragati Engineering Works and Universal Hydraulic Copy Turning Attachment manufactured by M/s Hariss Machines Pvt. Ltd. are three systems incorporating hydraulic system with pressure etc. I find that technology is advancing fast. The things which were being done manually are now being done mechanically. Added to this, the computers have changed the entire system of operation. In this every day changing scenario because of technical advancement, I shall have to see whether a particular item-described in the declaration falls within the general ambit and its scope of the description. Examining the present input namely, Hydraulic Tracer Model Hitrace in the light of the Chartered Engineer's Certificate, I find that this item will be generally covered by the description given in the declaration.

8. The learned Counsel also referred to the clarification given by the Delhi Collectorate. I find that the emphasis in this clarification was that if the classification of the product is correctly given, then Modvat credit should not be disallowed merely because there is a difference in the nomenclature of the product. I find that in the instant case, there is no dispute on the classificaion of the product.

The product has been classified under Chapter Heading 8466.00. The dispute is about the nomenclature. From the description in the declaration, I find that the declaration no doubt is in general terms but in spite of the fact that the description is in general, it is wide enough to include the item Hydraulic Tracer Model Hitrace and this view is fully supported by the clarification given by the Delhi Collectorate in their Trade Notice referred to above.

9. For becoming eligible to Modvat credit, compliance of Rules 57A and 57G is essential. There is no dispute that the input and the finished product are specified goods for the purpose of Rule 57A. There is no dispute that Notification No. 177/86 covers both the inputs and the final product. For the purpose of Rule 57G,

the appellants have filed the declaration and as discussed above, the item was covered by description. I also observe that similar issue was decided upon by the various Benches of the Tribunal. Having regard to all these discussions and the ratio of the judgments cited and relied upon by the appellants.

I hold that Hydraulic Tracer Model Hitrace is covered by the description given in Serial No. 15 of the declaration dated 31-3-1993.

In this view of the matter, the Appeal is allowed and the impugned order is set aside. Consequential relief, if any, shall be admissible to the appellants in accordance with law.