

Commissioner of Central Excise, Mumbai and Another Vs. Rexnord Electronics and Controls Ltd. and Another

Commissioner of Central Excise, Mumbai and Another Vs. Rexnord Electronics and Controls Ltd. and Another

SooperKanoon Citation : sooperkanoon.com/942627

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-13-2012

Judge : The Honourable Mr. P.R. Chandrasekharan, Member (Technical)

Appeal No. : APPEAL No.E/3085/02 & 3729/02 (Arising out of Order-in-Appeal No.171/M-V/2002 dated 01/05/2

Appellant : Commissioner of Central Excise, Mumbai and Another

Respondent : Rexnord Electronics and Controls Ltd. and Another

Advocate for Pet/Ap. : For the Appellants : Shri.A.K.Prabhakar for Revenue. For the Respondents : Shri.S.S. Gupta, Advocate.

Judgement :

P.R. Chandrasekharan

1. There are two appeals, one filed by the appellants and the other filed by the revenue against order-in-appeal No.171/M-V/2002 dated 01/05/2002 passed by the Commissioner of Central Excise (Appeals), Mumbai. As both the appeals are arising out of a common order, they are being taken up together for consideration and disposal.

2. The appellant M/s. Rexnord Electronics and Controls Ltd., Mumbai, are manufacturers of industrial cooling fans. They availed Modvat credit on capital goods, viz., moulds and dies. These moulds and dies were removed to their job workers, M/s.Sagar Engineering, at Vasai, without taking permission from the department. Therefore, a notice was issued to the party for reversal of the Modvat credit taken amounting to Rs.2,51,337/- on the said moulds and dies. The notice was later on confirmed by the adjudicating authority confirming the reversal of Cenvat credit along with interest thereon and also imposing an equivalent amount of penalty under Section 11AC.

3. The appellant/assessee preferred an appeal before the Commissioner (Appeals), who vide the impugned order upheld the demand for the Cenvat credit wrongly taken but set aside the penalties on the appellant on the ground that the assessee did not have any intention to deliberately evade or avoid duty. The assessee is before me against confirmation of duty demand whereas the revenue is before me for imposing the penalty on the appellant/assessee, as the Ld. lower appellate authority has set aside the same.

4. The Ld. Consultant for the appellant submits that it was only a procedural lapse on the part of appellant/assessee that they did not inform the department and take prior permission. There was a strike in their factory at that time which impeded them in complying with the procedures. Subsequently, after the strike was over, the moulds and dies were also brought back. Accordingly, he pleads for setting aside the demand confirmed against the appellant/assessee.

5. The Ld. AR appearing for revenue, on the other hand, strongly argues for imposition of penalty on the assessee.

6. I have carefully considered the rival submissions.

7. Rule 57S of the Central Excise Rule, 1944 governed the manner of utilization of capital goods and credit allowed in respect of duty paid thereon. Sub-rule (8) to (10) of the Rule 57S of the Central Excise Rules, 1944, which are relevant for considering the issue reads as follows:-

“8. Notwithstanding anything contained in sub-rule (1) a manufacturer may, with the permission of the Commissioner and subject to such terms and conditions and limitations as he may impose, remove the moulds and dies, without payment of duty, to a job-worker for the purpose of production of goods on his behalf and according to his specifications.

9. The Commissioner shall not permit a manufacturer to remove the moulds and dies under sub-rule (8) unless the manufacturer undertakes to bring back the said moulds and dies and the goods so manufactured, within a period of three months from the date of their removal or such extended period as the Commissioner may permit.

10. In case where moulds and dies removed under sub-rule (8) are not received back within a period of three months from the date of removal of such moulds and dies or within such extended period as the Commissioner may permit, duty shall be paid equivalent to the credit taken on the said moulds and dies.”

7.1 A plain reading of the above Rule indicate that the assessee needs to take prior permission before removal of the capital goods and if the capital goods are not brought back within a period of three months or within such extended period, they are liable to pay duty equivalent to the credit taken. In the instant case it is an admitted fact that the assessee did not take any permission from the department nor did they bring back the moulds and dies within the stipulated period. Hence, they are liable to pay duty equivalent to the credit taken. Therefore, the order of the lower appellate authority confirming the demand cannot be faulted.

8. As regards the issue whether the appellant is liable to pay penalty, the lower appellate authority has observed that the appellant did not have any malafide intention and the goods were still available with the job worker and, accordingly, he waived the penalties. I am in the agreement of the said findings of the lower appellate authority and I am of the view that penalty needs to be imposed when there is a deliberate defiance of law, which is not forthcoming in the instant case. Accordingly, I do not find any adequate ground for imposition of penalty as contended by the revenue.

9. In sum, I uphold the order passed by the lower appellate authority and the appeals filed by both the appellant/assessee and the revenue are dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com