Tru Wheels Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-23-1996

Reported in : (1996)(87)ELT730TriDel

Appellant : Tru Wheels Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The appellants manufacture excisable products, namely, front and rear wheel assemblies, knuckle steering, tools and implements in the manufacture of which they use materials, duty paid on which is being availed of as Modvat credit under Rule 57A of the Central Excise Rules.

Some of these products were being cleared by them free of duty under Chapter X Procedure. For the inputs used by them in the manufacture of the latter type of clearances, they had reversed the Modvat credit corresponding to the weight of the final product so cleared free of duty. The department had taken the stand that such reversal of credit should not be limited to the weight of the inputs contained in such final product but should extend to the whole of the weight of the inputs issued for the manufacture of such products. The Additional Collector passed his order dated 15-1-1992 demanding the duty corresponding to the amount of credit disallowed for the aforesaid reason which amounted to Rs. 96,908.66 and also imposed a penalty of Rs. 50,000/- under Rule 173Q. The present appeal is directed against the said order.

2. Arguing the case of the appellants, Miss Ginny Bedi, learned Advocate submitted that as far as the disallowance of Modvat in respect of the inputs used in the manufacture of exempted final products is concerned, they have no case in terms of the larger Bench decision in Kirloskar Oil Enginess [1994 (4) RLT 296]. Even as regards the differential quantity involved between the weight of inputs issued for the manufacture of such exempted products and the net weight of such resultant final product they were under a bonafide impression that they were liable to reverse the credit only in the manner followed by them, namely, reversing the credit on the basis of the net weight of the resultant product. They had been under correspondence with the department and had declared all the necessary particulars. There was no suppression or wilful misstatement of facts on their part. The invocation of longer period for demand of duty is totally unjustified in the present case, she submitted. Moreover, they had paid the duty on the scrap arising in the manufacture of their final product and such scrap arose as much in the manufacture of the exempted products as in the case of the products cleared by them on payment of duty. She explained that it would have been a very difficult job for them to apportion the scrap according as it arose in relation to duty paid products or products cleared free of duty. Such segregation was also not a practical proposition, as such scrap arose from the manufacture of their products which were cleared under both categories and at the time of manufacture, such segregation as between dutiable products and exempted products could not be anticipated.

4. We have considered the submissions. We agree with the submission of the learned Counsel that in the circumstances of the case the application of the extended period was clearly not justified. Hence, the appeal should succeed on this limited ground itself. The appellants also appear to have a case in their favour by a strict reading of the provisions of Rule 57D(1) which lays down that credit of specified duty allowed in respect of any inputs shall not be denied or varied on the ground that part of the goods is contained in any waste, refuse or by-product arising during the manufacture of the final product, whether or not such waste, refuse or by-product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate or duty or is not specified as a final product under Rule 57A. In this particular case, as pointed out by the learned counsel, they

cleared the resulting scrap on payment of duty. Since the duty demand as a result of disallowance of Modvat credit is referable to the scrap arising in the course of manufacture of the final product, the provisions of Section 57D(1) extracted would appear to be applicable in their case. Thus, apart from the notice being barred by limitation, the appellants have a case on merits. Accordingly, we set aside the impugned order and allow the appeal.