Classic Electronics (P) Ltd. Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-07-1996

Reported in : (1996)(87)ELT103TriDel

Appellant : Classic Electronics (P) Ltd.

Respondent : Collector of C. Excise

Judgement :
1. The appeal is against the findings of the learned Collector (Appeals) holding that batteries by themselves are marketable, generating sets are on sale without the batteries. When the batteries are exhausted they are either recharged or bought afresh it is not that the generating set is replaced. They are a thing apart from the final product which is the generating set.

2. The appellants are engaged in the manufacture of generating set falling under Heading 85.02 and were availing the benefit of input duty credit under Modvat Scheme. Checking of RT 12 returns for the month of October, 1993 revealed that credit of Rs. 6,909.92 was taken on batteries fitted with the generating set. It was alleged by the Department that batteries fitted with generating set were not inputs used in or in relation to the manufacture of generating sets and therefore, they were not eligible for Modvat credit. Accordingly, a show-cause notice was issued to the appellants asking them to explain as to why the Modvat credit taken by them should not be dis-allowed and the duty should not be demanded from them.

3. The learned Counsel Shri K.K. Anand submitted that generating set cleared by the appellants with battery required a battery for its operation; that battery is one of the essential component of this type of generating set being manufactured; that the value of the battery was included in the assessable value of the generating set; that the Tribunal in the case of Jayshree Industries reported in 1993 (63) E.L.T. 492 had held that dry battery cells fitted to quartz clocks and time pieces are essential components to make the final product operational and marketable and therefore, Modvat credit was admissible under Rule 57A of the Central Excise Rules, 1944; that marketability of the generating set is linked with the battery; that the stand of the Department that the value of the battery should be added to the assessable value of the generating set and that Modvat credit of duty on battery shall not be allowed is mutually contradictory; that there was no justification to show that it was not an essential part when it comes to allowing Modvat credit; that it amounts to double taxation; that even the Apex Court had held that any item that improves marketability is treatable as input. The learned Counsel therefore, prayed that the appeal may be allowed.

4. Shri Haja Mohiuddin, the learned JDR submitted that battery was not an input used in or in relation to the manufacture of generating set; that generating set is complete and independent product even if it is without battery; that undisputed fact is that the appellants manufactured only generating set; the battery was not integral part of the generating set but that generating set is marketable without batteries; that when batteries are exhausted, they are rejected and not the generating set is replaced. The learned DR reiterated the findings of the lower authorities.

5. Heard the submissions of both sides and considered them. I find that the appellants have contested that while assessing the generating set they have asked the appellants to include the value of the battery in the assessable value of the generating set It means that the Department considers the battery an integral part or an essential part of the generating set. Once the department considers it an integral part of the generating set, there was no question of not allowing the input duty on battery under the Modvat Scheme. I find that there is force in the argument of the appellants. I also observe that in the instant case though generating set is

complete but if it does not run, it cannot have a market. The battery in this particular type of generating set is necessary and compulsory if it is supplied with the generating set and the value of the battery is included in the assessable value of the generating set. It is a component required for running the generating set. In that sense it is an essential component and not an accessory.

In Para 13 of the order in the case of Jayshree Industries supra this Tribunal had held : "13. Context of Modvat Scheme of the economic objective - Now we come to the last in our agenda - namely problem viewed in the context of Modvat Scheme and its objective.'Modvat', as reflected in the Hon'ble Finance Minister in his Budget speech, while introducing the scheme in 1986 in a lighter vein told the Parliament that the scheme is a Modified Value Added Tax Scheme and not 'Modvat', (which we now find, driving us mad). Value Added Tax or VAT is a tax collected at each of stage of value addition. Since a wholesale VAT is not possible in India because of the division of taxation powers between the Centre and the States by the Constitution of India, a modified VAT has been introduced at the manufacturer's level so as to reduce the cascading effect of input taxation on the final product. The economic objective of the scheme is to mitigate the burden of levies on inputs going into the manufacture of the final product, by giving credit in respect of the duty paid on all inputs, which go into the making of the goods for delivery at the factory gate by the manufacturer. Thus, the scheme could be brought within the purview of excise law and would not disturb the Centre-State division of Taxation powers.

In this background, we are to take a view that the inputs, which go upto the stage of ready for delivery at the factory gate, may have to be given the credit and this is also in line with the law as per the ratio of the decision of the Apex Court. V, on the revenue or other considerations, the Govt. wants to deny this scheme to some inputs as in the case of Petroleum products, textiles or in the case of selected categories of items such as machinery equipment etc., they can specifically exclude such inputs either by placing them in the exclusion clause under Rule 57A or by deleting them from the Notification issued under Rule 57A. In our view, such a denial cannot be resorted to by means of the Trade Notice, especially when the provision of the Trade Notice are repugnant to the ratios of the decision of the

Supreme Court and also against the very economic criterion behind the Modvat Scheme." 6. I find that no evidence has been brought on record by the Department to prove that gen. set on which credit of input duty under Modvat scheme is being claimed by the appellants was being supplied by them without the battery. I also observe that the admitted position is that the value of the battery was being included in the assessable value of the genrating set. I also observe that for making the gen. set operational, this battery is necessary. I find that this Tribunal in the case of Jayshree Industries had held that in similar circumstances, Modvat credit of input duty on dry battery cells fitted in clocks and time pieces shall be admissible. Having regard to the above discussion and the facts and circumstances of the case and the case law I hold that Modvat credit of duty in the instant case shall be admissible on the battery.

7. In this view of the matter, the appeal is allowed. Consequential relief, if any, shall be admissible to the appellants in accordance with law.