(2012) 06 BOM CK 0001

In the Bombay High Court

Case No : Central Excise Appeal No. 29 of 2012

Commissioner of Central Excise APPELLANT

Vs

Ajinkya Enterprises RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Citation : (2013) 294 ELT 203

Hon'ble Judges : R.Y. Ganoo, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : A.S. Rao, for the Appellant; Shrikant Acharya, Partner, for the Respondent

Judgement

J.P. Devadhar, J.—Whether the CESTAT was justified in holding that the CENVAT credit of duty paid on HR/CR coils availed and utilized by the assessee for paying duty on decoiled HR/CR coils need not be reversed, is the question raised in this appeal. The dispute in the present case relates to the period from 2nd March, 2005 to 31st December, 2005.

2. The assessee is engaged in the activity of decoiling of HR/CR coils by cutting and slitting them into specific sizes as per the design given by the buyer and further carried out the activity of pickling and oiling on the decoiled HR/CR coils. The assessee took credit of duty paid on HR/CR coils and utilized the said credit while paying duty on the decoiled HR/CR coils at the time of clearance. It is not in dispute that the duty paid on decoiled HR/CR coils is more than the duty paid on HR/CR coils (the credit of which was taken by the assessee).

3. On 4th April, 2006, a show-cause notice was issued to the assessee to the effect that the activity of decoiling the HR/CR coils carried on by the assessee did not constitute manufacture and, hence, the assessee was not entitled to take the credit of duty paid on HR/CR coils. The assessee opposed the claim by filing a detailed reply.

4. By an order-in-original dated 23rd May, 2007, the adjudicating authority on

the basis of the C.B.E. & C. Circular dated 2nd March, 2005 held that the activity carried on by the assessee did not constitute manufacture and, hence, the assessee was not entitled to take credit of duty paid on HR/CR coils. Accordingly, the adjudicating authority confirmed the demand of Rs. 38,43,070/- with interest and penalty.

5. On appeal filed by the assessee, the Commissioner (Appeals) confirmed the demand and dismissed the appeal filed by the assessee. On further appeal filed by the assessee, the CESTAT by the impugned order dated 23rd June, 2011 [2013 (288) E.L.T. 247 (Tri.-Mumbai)] allowed the appeal and held that the assessed is not required to reverse the credit of duty paid on HR/CR coils. Challenging the aforesaid order, the Revenue has filed the present appeal.

6. According to the Revenue once a Circular was issued by the C.B.E. & C. on 2nd March, 2005 thereby withdrawing the earlier Circular dated 7th September, 2001, it was clear that the activity of decoiling the HR/CR sheets did not constitute manufacture and, therefore, the assessee could not have taken credit of duty paid on HR/CR coils. It is further argued that if the process of decoiling the HR/CR coils did not constitute manufacture, then, obviously no duty was payable on clearance of the decoiled HR/CR coils and consequently the assessee could not taken credit of duty paid on HR/CR coils. Merely because, the assessee had paid duty though not payable, it cannot be said that the credit of input duty has been correctly taken. It is contended that the assessee had applied to the Board seeking regularization of the credit which was wrongly taken, but the Board has rejected the request made by the assessee. In these circumstances, it is submitted that the CESTAT ought not to have interfered with the order passed by the authorities below.

7. We see no merit in the above contentions. As rightly contended by the representative of the assessee appearing in person, till 1st March, 2005 the Revenue has accepted that the activity carried on by the assessee constituted manufacturing activity in view of Board Circular dated 7th September, 2001 and accordingly held that the assessee is entitled to take credit of duty paid on HR/CR coils. It is only because, the Board, on 2nd March, 2005 has withdrawn the Circular dated 7th September, 2001 the Revenue is claiming that the activity carried on by the assessee does not amount to manufacturing activity. The question is, whether on the facts of the present case, the Revenue, based on the Circular dated 2nd March, 2005, is justified in calling upon the assessee to reverse the credit or pay the amount to the extent of the credit liable to be reversed, with interest and penalty?

8. It is relevant to note that the Board in its Circular dated 7th September, 2001 had only held that the activity of cutting/slitting of HR/CR coils into sheets or strips constitutes manufacture. Admittedly, the assessee had carried on additional activities such as pickling and oiling on the decoiled HR/CR coils, which is a complex technical process involving huge investment in plant and machinery. Since these additional activities were not considered by the Board in its Circular

dated 7th September, 2001, the withdrawal of the said Circular cannot be a ground to hold that the activity carried on by the assessee did not constitute manufacturing activity. It is only on 24th June, 2010, the Board has issued a Circular to the effect that the process of pickling does not amount to manufacture. Therefore, during the relevant period, that is, during the period from 2nd March, 2005 to 31st December, 2005, it could not be said that the issue was settled and that the assessee paid duty on decoiled HR/CR coils knowing fully well that the same were not manufactured goods. If duty on decoiled HR/CR coils was paid bona fide, then availing credit of duty paid on HR/CR coils cannot be faulted.

9. Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of 2007 (121) ECC 123 : 2009 (15) S.T.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue.

10. Therefore, in the facts of the present case, in our opinion, no fault can be found with the decision of the CESTAT in passing the impugned order. The appeal is accordingly dismissed with no order as to costs.

