

(2013) 06 MAD CK 0101

In the Madras High Court

Case No : C.M.A. No"s. 106 and 107 of 2009

Commissioner of Central Excise

APPELLANT

Vs

Customs, Excise and Service Tax Appellate Tribunal Chennai,
South Regional Bench and M/s. Rajshree Sugars and
Chemicals Ltd.

RESPONDENT

Date of Decision : 07-06-2013

Acts Referred:

Citation : (2013) 297 ELT 498 : (2013) 23 GSTR 96 : (2013) 6 MLJ 396

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : Kumarpal R. Chopra, for the Appellant; N. Inbarajan for R2, for the Respondent

Judgement

Chitra Venkataraman, J.—The Revenue is on appeal as against the order of the Customs, Excise and Service Tax Appellate Tribunal

passed in Nos. 496 and 497/2008 dated 29.05.2008 raising the following substantial questions of law:-

1. Whether the first respondent was right in holding that it is not established that the impugned goods arose from any process of manufacture ?
2. Whether the first respondent was correct in denying the reliance placed by Revenue on note 8(a) of the Section XV of the Central Excise Tariff

Act, 1985 as it has been clearly established that the impugned goods arose due to "Mechanical Working" ?

It is seen from the facts narrated that the assessee is a manufacturer of sugars and molasses. They have availed Cenvat credit on their capital

goods. It was noted that metal scrap were generated out of scrapping of the capital goods (Machinery and components). The assessee cleared M.

Tons of M.S./C.I. Scrap and M.S./C.I. Borings valued at Rs. 13,28,551/- without payment of duty from the period 01.02.2003 to 30.11.2003.

2. The Assistant Commissioner of Central Excise took the view that the scrap generated in the course of manufacture of sugar arising due to

scrapping of worn out capital goods attracted duty at time of their clearance from the factory, consequently, a show cause notice was issued that

the assessee was not entitled to clear them without payment of duty. It was also stated that it would fall under Chapter sub-heading No. 7204.90

of the First Schedule to the Central Excise Tariff Act, 1985. The Officer viewed that waste and scrap was not restricted to those arising out of the

manufacture of machineries; further, anything that is considered as waste and scrap and not usable, would fall under Sub-heading No. 7204.90 of

the First Schedule to the Central Excise Tariff Act, 1985. In the circumstances, after giving notice, an order of adjudication was made demanding

duty as well as penalty. Aggrieved by this, the assessee went on appeal.

3. The First Appellate Authority pointed out that the scrap cleared were out of scrapping of worn out parts of capital goods and these products so

cleared were condemned, worn out and unserviceable; such worn out parts were replaced by new parts. The scrap so cleared by the assessee

was during the period from 01.02.2003 to 30.11.2003 and 01.12.2003 to 31.08.2004. During this period, there was no provision for the demand

of duty on the waste and scrap of the capital goods in the Cenvat Credit Rules, 2002/2004. Based on Rule 3(4) of Cenvat Credit Rules, 2002, the

First Appellate Authority held that Rule 3(4) of the Rules as it stood at the relevant time made no provision on the reversal of credit or payment of

duty by the manufacturer on the waste and scrap of the capital goods at the time of their clearance. Under Notification No. 27/2005, Sub Rule 5A

to Rule 3 of Cenvat Credit Rules, 2004 was brought into effect from 16.05.2005. Thus duty liability would be applicable only from 16.05.2005. In

the circumstances, the Appellate Authority held that when the scrap had not arisen out of manufacture, but arising on account of wear and tear in

the absence of specific provision for such waste and scrap in the relevant rules, duty could be demanded.

4. Aggrieved by this, the Revenue went on appeal before the CESTAT. (CUSTOMS, EXCISE AND SERVICE TAX APPELLATE

TRIBUNAL), which agreed with the view of the Commissioner of Central Excise (Appeals), thus, the Revenue's appeal was dismissed.

Aggrieved by this, the present appeal by the Revenue.

5. As far as the claim of the Revenue that Sub Rule 5A to Rule 3 of Cenvat Credit Rules, 2004 has relevance to the case on hand is concerned, a

reading of Sub Rule 5A to Rule 3 of Cenvat Credit Rules, 2004 shows that the provision for levy of payment of duty on capital goods cleared as

waste was inserted by Notification No. 27/2005 effective from 16.05.2005. On the admitted fact that the period covered under the appeals is

2003-04, we do not find justifiable ground to uphold the contention of the Revenue that Sub Rule 5A of the Rules have relevance to the case.

6. As regards the contention that the scrap cleared by the assessee attract duty by way of reversal of credit of payment of duty, even herein, going

by Sub Section 8(a) of Section XV of the Central Excise Tariff Act, 1985, used and scrap are referred to as one from the manufacture or

mechanical working of metals and metal goods. From the admitted fact that the scrap are the material waste not arising out of manufacture, but

arising out of worn out parts of capital goods used in the production of sugar and molasses, we do not find any justifiable ground to interfere with

the order of the CESTAT.

7. The CESTAT pointed out that what was cleared was scrap of worn out capital goods. The show cause notice did not contain details as to

whether the Iron and Steel items were manufactured by the assessee that the scrap are generated in the course of such manufacture. In any case,

the CESTAT pointed out that the Revenue had not pointed out that the assessee had manufactured Iron and Steel goods or components. Having

regard to the above said fact that the expression "scrap" is defined as metal waste and scrap from the manufacture or mechanical working of metal

and metal goods and on the nature of manufacturing activity of the assessee, viz., production of sugar and molasses, we have no hesitation in

confirming the order of the CESTAT, thereby, rejecting the contention of the Revenue. Accordingly, the Civil Miscellaneous Appeal is dismissed.

No costs.