
(2010) 02 P&H CK 0108
In the Punjab And Haryana At Chandigarh

Commissioner of Central Excise Commissionerate	APPELLANT
Vs	
Emdet Engineers Pvt. Ltd.	RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 57G(2)

Citation : (2010) 254 ELT 756

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The compendium of facts culminating in the commencement of, relevant for disposal of present appeal filed by the revenue and emanating from the record is that the respondent-assessee M/s Emdet Engineers Pvt. Ltd. (for brevity "the assessee") was engaged in the manufacture of motor vehicle parts. The revenue claimed that during the relevant period from March 1988 to March 1994, the assessee wrongly availed/utilized the modvat credit, on deemed basis, on Aluminium Alloy Ingots, waste and scrap of Aluminium and waste and scrap of Zinc, which were clearly recognizable, as being non-duty paid or charged to Nil rate of duty. As such, assessee was not entitled for the modvat credit on the inputs. Therefore, a show cause notice was issued, as to why the deemed credit be not recovered from it (assessee).

2. The assessee filed the reply, in which it was explained that according to Rule 57G(2) of Central Excise Rules 1944, all stocks of inputs in the country except such stocks lying in a factory, customs area or warehouses are deemed to be duty paid and credit, in respect of that, is to be allowed on deemed basis. It was claimed that there is no evidence indicating that the inputs scrap and alloy ingots etc. have come to the market from the sources, for which an exception has been laid down in the said rule and that the scrap is clearly recognizable, as not duty paid. The provisions of notification dated 1.8.1984 were stated to be not applicable to the Aluminium scrap in the form of old and used pistons, which

arise as a result of prolonged use of good pistons and which in all respect satisfies the definition of scrap given in Note 6(a) of Section XV of Central Excise Tariff as being metal goods definitely not usable as such because of breakage, cutting up wear and tear or other reason. According to the assessee, the onus for proving non-payment of duty on inputs purchased from the open market was on the revenue, which it had failed to discharge. In all, according to the assessee, it has rightly availed the facility of modvat credit. In order to substantiate its claim, the assessee has relied upon the various judgments as mentioned in the reply.

3. The explanation offered by the assessee did not find favour with the Adjudicating Authority, which ordered the recovery of modvat credit from the assessee, vide impugned order dated 19.5.2000 (Annexure P1).

4. Aggrieved by the impugned order (Annexure P1), the assessee filed the appeal, which was also dismissed by the Commissioner, Customs & Central Excise (A), Chandigarh, vide order dated 17.10.2002 (Annexure P2).

5. Still dissatisfied with the impugned orders (Annexures P1 and P2), the assessee filed the appeal before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, which was accepted, vide impugned order dated 1.8.2003 (Annexure P3).

6. The revenue did not feel satisfied with the impugned order (Annexure P3) and filed the present appeal.

7. As is evident from the record, the Appellate Tribunal has negated the claim of the revenue on the following grounds:

For the early period, the benefit was allowed by the Commissioner (Appeals) and Revenue filed the appeal and the Tribunal vide Final Order No. A/896-1901/96 NB dated 11.7.96 dismissed the appeal. I find that the present issue is already decided by the Tribunal in the above mentioned order. The Tribunal held as under:

Used in the manufacture of sterling wheels of motor vehicles part are wholly exempted from duty u/s 182/84 would show them as clearly recognizable as non duty paid by the manufacturers of these goods at the time of their clearances from the factory. The department's contention is that no further onus to prove that these are non duty paid is cast in the Central Excise authorities. We have heard Shri D.P.Vashney, Id. Counsel for the respondent who states that notification 182/84-CE is conditional and in any case the respondents have purchased the scrap from the open market and even according to the explanation to the notification No. 182/84, for the purpose of that notification of all stocks of aluminium and products thereof in the country except such stock as are clearly recognizable as non-duty paid shall be deemed to aluminium xxx p and product thereof on which the duty has already been paid.

We have carefully considered the submission made by both the sides. We find on this very issue, there has been decision of larger Bench of the Tribunal in the Machine Builders and Ors. v. C.C.E. Bolpur reported in 1996 (12) RLT 817 dealing

with a situation like the present one. In these appeals the larger Bench of the Tribunal in Para 23 of the decision had observed that in case of conditional notification onus is on the Revenue to prove that scrap is clearly non-duty paid and this onus is not discharged by the Revenue.

In view of the above decision of the Tribunal, the impugned order is set aside and the appeal is allowed.

8. Now the following substantial question of law arises for determination in this appeal:

Whether the Tribunal was correct in holding that the onus was on revenue to prove that scrap coming into existence as a result of wear and tear of auto pistons, broken metal containers, motor cycle parts etc. was clearly non-duty paid and this had not been discharged by the revenue when the Apex Court and Tribunal itself have consistently held that only the scrap generating during the process of manufacture was liable to be charged to Central Excise duty.

9. Assailing the impugned order (Annexure P3), the learned Counsel for the revenue has submitted that the assessee had been using waste inputs purchased from the open market and such inputs were recognizable, as being non-duty paid or charged to Nil rate of duty, so it (assessee) is not entitled to avail the facility of modvat credit. In order to substantiate his arguments, he has placed reliance on judgment of Allahabad High Court in case Ankur Steels Kurouli Vs. CEGAT and Others, .

10. Hailing the impugned order (Annexure P3), on the contrary, the learned Counsel for the assessee urged that the revenue has utterly failed to prove that the waste inputs used by the assessee in manufacturing the vehicle products (motor vehicle parts), were recognizable as non-duty paid, so the assessee has rightly availed the facility of modvat credit. The argument further proceeds that since the inputs used by the assessee are not covered under the notification dated 1.8.1984, so it (assessee) is entitled to avail the facility of modvat credit.

11. Having regard to the rival contentions of the learned Counsel for the parties and having gone through the record, we are of the considered view that there is no merit in the present appeal.

12. It is not a matter of dispute that the assessee was engaged in the manufacture of motor vehicle parts and it has availed the facility of modvat credit. Now the revenue claimed that the inputs used by the assessee are recognizable as non-duty paid, so it is not entitled for the modvat credit. The assessee has stoutly denied the same.

13. The following question of law was under consideration in Ankur Steels Kukrouli's case (supra):

Whether the Hon"ble Tribunal was justified in holding that deemed credit as per letter F. No. Ts/36/94-TRU, dated 1.3.94 can be denied on the ground that the

inputs (re-rollable material like old and used rails, wheels, crossties, sleepers, etc.) were clearly recognizable as non-duty paid when the deemed credit order dated 1.3.94 did not contain such a Clause (stipulation).

14. Possibly, no one can dispute about the observations of Allahabad High Court in Ankur Steels Kukrouli's case (supra) where it was admitted by the assessee that no duty was paid on the unserviceable rail materials. In view of the admission of the assessee, question No. 1 was answered in the affirmative, but the same would not come to the rescue of the revenue in this case, because the assessee has specifically denied the factum of non-duty paid on its inputs used for its manufacturing of final products.

15. That being so, the sole question that arises for determination is whether it is proved on record that the inputs used by the assessee were non-duty paid or charged to Nil rate of duty?

16. The argument of learned Counsel for the revenue that the mere existence of an exemption notification is sufficient to infer that the inputs used by the assessee are non-duty paid or charged to Nil rate of duty, is not only devoid of merit but misplaced as well, because in our view, the mere existence of a conditional exemption as contained in the notification is not sufficient to infer that the inputs used by the assessee are wholly exempted from duty or clearly recognized, as not being duty paid or charged to nil rate of duty, particularly when the assessee has stoutly denied the same. Again, it is not a matter of dispute that the assessee is using the different type/kinds of Aluminium Alloys Ingots, waste and scrap of Aluminium and waste and scrap of Zinc. In that eventuality, burden of proof was on the Department to prove that the inputs used by the assessee were not being duty paid or charged to Nil rate of duty, which is totally lacking in the present case. The natural corollary would automatically follow that in the case of conditional exemption, unless it is shown that all the conditions are satisfied, it cannot possibly be saith that the inputs are wholly exempted or are clearly recognizable, as not being duty paid or charged to Nil rate of duty. The revenue cannot possibly be heard to say that it is for the assessee to show that the conditions are satisfied, but in fact the revenue has failed to prove that the inputs used by the assessee are recognizable as not being duty paid or charged to Nil rate of duty. In that eventuality, the exemption already availed by the assessee must be regarded as having been rightly availed. Therefore, it is held that burden of proof was on the revenue to prove that the inputs used by the assessee were not being duty paid or charged to Nil rate of duty and in the absence of any cogent material on record in this relevant connection, the assessee cannot legally be denied the right to avail the facility of modvat credit, in the obtaining circumstances of the case.

17. In the light of the aforesaid reasons, the question of law is accordingly answered against the revenue and in favour of the assessee.

Resultantly, the instant appeal is dismissed, with no order as to costs.