

(2013) 02 JH CK 0076

In the Jharkhand High Court

Case No : Taxation Appeal No. 2 of 2004

Commissioner of Central Excise, Ranchi

APPELLANT

Vs

M/s. Maithan Ceramics Ltd., Dhanbad

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Central Excise Rules, 1944 — Rule 173H, 173L

Citation : (2014) 45 GST 405 : (2013) 2 JLJR 193 : (2013) 31 STR 531

Hon'ble Judges : Prakash Tatia, C.J.;Alok Singh, J

Bench : Division Bench

Advocate : Ratnesh Kumar, for the Appellant; A.R. Choudhary, for the Respondent

Judgement

1. Heard learned counsel for the parties. The questions raised by the appellant in this appeal is as under:

Whether in view of the specific provisions under rule 173H and rule 173L of the Central Excise Rules, 1944, remaking, refining, reconditioning, repairing or similar processes on defective goods returned to the manufacturer of the final product can be treated as an input for the purpose of Rule 57A of the Central Excise Rules, 1944?

2. The brief facts of the case are that the assessee is the manufacturer of the refractory bricks. Assessee after paying the excise duty sold the refractory bricks. Some of the defective bricks have been returned by the purchaser to the assessee. The assessee used those defective refractory bricks to manufacture new refractory bricks. The assessee was subjected to levy of excise duty on the bricks which has been manufactured from defective refractory bricks. The assessee claimed MODVAT credit on the defective refractory bricks by claiming it to be input for the manufacture of the refractory bricks. The Tribunal in view of the various earlier decisions of the Tribunal, given in the case of CCE, Merrut Vs. Bhushan Steel & Strips Ltd. reported in 2000 (39) RLT 200 (CEGAT-LB) and another larger Bench decision in the case of Hindalco Industries Ltd. Vs. CCE,

Allahabad reported in 2000 (38) RLT 986 (CEGAT-LB) held that the assessee is entitled to MODVAT credit. The Tribunal in its impugned order dated 01.10.2003 also held, that brick manufactured from defective refractory bricks are new product as it has to undergo a process and thereafter new refractory bricks are manufactured and therefore, the revenue has levied the excise duty upon such final product which are said as the refractory bricks.

3. The contention of the learned counsel for the appellant is that there is specific provision in Rule 173H of the Central Excise Rules, 1944 (in short the "Rules") with respect to again bringing in the factory the, product which has been sold by the factory after paying the excise duty and if, the said product is found defective by the factory purchaser, then in that situation the said factory is entitled to refund of the excise duty paid as per Rule 173L of the Rules.

4. Learned counsel for the assessee vehemently submitted that the goods in question which have been returned to the assessee by assessee's purchasers were defective and they have undergone the process and thereafter, the new refractory bricks have been manufactured and since it involves the process of manufacturing therefore, revenue has levied the excise duty upon the final product otherwise the excise duty itself could have not been levied upon the new product. Therefore, the question whether defective refractory bricks have been undergone to the process of manufacturing, cannot be questioned by the revenue.

5. We considered the submissions of the learned counsel for the parties and perused the facts as well as the rules referred above.

6. The Rule 173H is as under:

Retention in, or bringing into, a factory or warehouse, of duty paid goods-(1) Except as hereinafter provided, no excisable goods or parts thereof on which duty has been paid shall be brought into, or retained in, a factory or a warehouse.

(2) An assessee may, subject to such" conditions as may be specified by the Collector, retain in or bring into, his factory or warehouse, excisable goods or parts thereof; accompanied by duty paying documents, if such goods or parts thereof,-

(a) are required for use in the manufacture of other goods in the factory; or

(b) are required in the factory for construction, repair or for use as fittings or equipment or for any other purpose for which such goods are normally consumed; or

(c) need to be re-make, refined, reconditioned, repaired or subjected to any similar process in the factory: or.....

7. The Rule 173L is as under:

Refund of duty on goods returned to factory.-(1) The Collector may grant refund

of the duty paid on manufactured excisable goods issued for home consumption from a factory, which are returned to the same or any other factory for being re-made, refined, reconditioned or subjected to any other similar process in the factory:

Provided that-

(i) such goods are returned to the factory within one year of the date of payment of duty or within such further period or periods not exceeding one year, in the aggregate, as the Collector may, on sufficient cause being shown, permit in any particular case;

(ii) the assessee gives information of the re-entry of each consignment of such excisable goods into the factory to the proper officer in writing in the proper form within twenty-four hours of such re-entry or within such further period not exceeding ten days, as the Collector may, on sufficient cause being shown, permit in any particular case to enable the proper officer to verify the particulars of such goods within forty-eight hours of receipt of the information;

(iii) the assessee stores the said goods separately pending their being remade, refined, reconditioned or subjected to any other similar process in the factory unless otherwise permitted by the Collector by an order in writing and makes such goods available for inspection by the proper officer when so required;

(iv) the amount of refund payable shall in no case be in excess of the duty payable on such goods after being remade, refined, re-conditioned or subjected to any other similar process in the factory:

Provided further that in relation to the declared excisable goods, for clause (ii) of the first proviso, the following clause shall be substituted, namely:-

(ii) the, assessee gives information of the re-entry of each consignment of such excisable goods into the factory to the proper officer in writing in the proper form within twenty-four hours of such re-entry or within such further period not exceeding ten days, as the Collector may, on sufficient cause being shown, permit in any particular case.

(2) The assessee shall maintain a detailed account of the returned goods and the processes to which they are subjected, after their return to the factory in the proper form.

(3) No refund under sub-rule (1) shall be paid until the processes mentioned therein, have been completed and an account under sub-rule (2) having been rendered to the satisfaction of the Collector within six months of the return of the goods to the factory. No refund shall be admissible in respect of the duty paid,-

(i) in respect of opened packages containing goods with concessional rates of duty or partial exemption for the small or cottage sector, as set forth in the notification issued under rule 8 or Section 5A of the Act;

- (ii) if the amount of refund payable on the goods is less than rupees fifty;
 - (iii) on goods which are disposed of in any manner other than for production of goods of the same class;
 - (iv) on the unmanufactured tobacco from which cigars cheroots and cigarettes so returned to the factory have been produced;
 - (v) if the value of the goods at the time of their return to the factory is, in the opinion of the Collector, less than the amount of duty originally paid upon them at the time of their clearance from the factory.
- (4) The Principal Collector may, for reasons to be recorded in writing, relax the provisions of this rule for the purpose of admitting a claim for refund.
- (5) The provisions of this rule shall not apply to excisable goods manufactured,-
- (i) in a free trade zone and returned to a factory in any other place in India; or
 - (ii) by a hundred per cent export-oriented undertaking and returned to another factory in any place in India.

8. A bare perusal of the above Rules would show that these Rules have applications to a particular contingency and that is that a manufacturer cannot bring back the excisable goods in his factory for which he has paid the excise duty unless any of the contingency as mentioned in Sub-rule 2 of Rule 173H of the Rules is available. In view of the Rule 173H Sub-rule 2 Clause C, the goods on which excise duty has been paid can be brought in the factory even for the purpose of remade, refining, reconditioning, repair or subjected to any similar process. It appears that because of this Clause "C" under Sub-rule 2 of Rule 173H, it may have been misunderstood that these goods, which are brought in the factory upon which the excise duty has been paid then only benefit available to the assessee is under Rule 173L of refund of excise duty. It appears that it has been ignored that issue involved in this controversy is whether the defective refractory bricks are inputs in the process of manufacturing of the new refractory bricks. Once Rule 173H allows a person to bring in his factory the goods upon which he has already paid the excise duty, then how these goods may be used is required to be seen according to the facts of the case, and in this case that, whether the defective refractory bricks were used as input for manufacturing new refractory bricks? There is no restriction of bringing in the defective material in the factory on which the assessee has paid the excise duty at the time of removing those goods from the factory. Once they have brought in the factory and if anybody wants to take benefit of refund of the duty because of the defects in the goods etc., then in that situation in stipulated period one can apply for the refund of the excise duty as provided by Rules 173H and 173L. Neither the Rules 173H nor 173L made any provision or had put any restriction that these goods which have been brought in the factory as defective goods can not be used as input in the factory. Therefore, in view of the above and in view of decision rendered by the larger Bench of the CEGAT in the case of Bhushan Steel & Strips

Ltd. and Hindalco Industries Ltd. referred above, the Tribunal has taken just and legal view in the matter.

9. We are of the considered opinion that revenue cannot dispute that the defective refractory bricks have been subjected to manufacturing and because of that reason only they have levied the excise duty for final product which have been made from the defective refractory bricks. In view of the above reasons, it is held that in the present controversy, there is no application for the Rules 173H and 173L. Decision given by the tribunal is in accordance with law and the taxation appeal is therefore dismissed.