(2012) 09 AHC CK 0060

In the Allahabad High Court

Case No : Central Excise Appeal No. 181 of 2006

Commissioner of Customs and Central Excise — APPELLANT

Vs

Samtel Color Ltd. (No. 1) — RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2013) 19 GSTR 6

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : B.K.S. Raghuvanshi, for the Appellant; Nishant Mishra, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri B.K.S. Raghuvanshi, learned counsel appearing for the Central Excise Department. Shri Nishant Mishra appears for the respondent-company. This Central excise appeal u/s 35G of the Central Excise Act, 1944 arises out of an order of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, dated March 3, 2006 by which the Tribunal has allowed the appeal of the assessee on the ground that the input credit was allowed under the Cenvat Credit Rules, 2001 on the paint used on the floor of production hall to make it dust free and fire retardant.

2. The Tribunal relied on the definition of "input" under the Cenvat Credit Rules, 2001 which includes goods used as paint and has not accepted the contention of the Department that the paint used on the floor of production hall to make it dust free and fire retardant is not for manufacture of the final product or within the factory of production.

3. The relevant part of the order of the Tribunal reads as follows:

6. I find that the definition of input under the Cenvat Credit Rules, 2001 is as under:

"Input" means all goods, except high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

7. The reading of the rule provides that input includes all goods except high speed diesel oil or motor spirit used in or in relation to the manufacture of final product and includes goods used as paint used for manufacture of final product or for any other purpose, within the factory of production.

8. In the present case, the paint is used on the floor of production hall to make it dust free and fire retardant. The definition of inputs includes all goods used as paint used for the manufacture of final product or within the factory of production for any other purpose. In view of the above definition of the inputs during the relevant period, I find that the appellants are entitled for the benefit of Modvat credit in respect of the paint in question. The impugned order is set aside and the appeal is allowed.

4. We have considered the submission of Shri Raghuvanshi and do not find that the substantial questions of law as raised in the memo of appeal arise for consideration by the court. The definition of "input" clearly includes "goods used as paint". The findings, that the paint used on the floor of production hall to make it dust free and fire retardant, is used for manufacture of the final product. The sensitivity and sophistication of the product, i.e., color picture tube (CPT) required dust-free environment for its manufacture. The finding, therefore, that the use of paint on the floor of the production hall, is a finding of fact, which does not call for any interference. In any case the dispute involves Cenvat credit amounting to Rs. 18,750, which is a very small amount for consideration. The Central excise appeal is dismissed.

