

(2008) 01 KL CK 0009
In the High Court Of Kerala
Case No : C.E. Appeal No. 41 of 2005

Indian Aluminium Co. Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3, 35G, 4, 4A

Citation : (2008) 2 KLJ 399

Hon'ble Judges : T.R. Ramachandran Nair, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Joseph Kodianthara and Mithun Markos, for the Appellant; P. Parameswaran Nair (Asst. Solicitor), for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—This is an appeal filed u/s 35G of the Central Excise Act against an order of the Tribunal confirming dis-allowance of Cenvat credit claimed by the appellant under Rule 16(1) of the Central Excise Rules for the goods returned. The appellant was engaged in manufacture and sale of Aluminium Extrusions and Aluminium parts of electric motors. The appellant took credit at Rs. 14,53,805/- being the duty paid on goods returned by the purchaser. However, the returned goods were re-manufactured and sold by the appellant to different parties. The cenvat claimed by the appellant under Rule 16(1) of the Central Excise Rules was directed to be reversed on the ground that the appellant did not return the goods after re-manufacture to the same party to whom the first sale was made in terms of sub-rule (2) of Rule 16. When the appellant filed appeal, the Tribunal rejected the claim on the ground that sub-rule does not authorise for cenvat credit when returned goods are re-manufactured and sold to different persons. It is against this order of the Tribunal the appellant has filed this appeal. We have heard Senior Counsel Sri. Joseph Kodianthara appearing for the appellant and Sri. P. Parameswaran Nair, Asst. S.G., appearing for the respondent.

2. Counsel for the appellant contended that credit taken under Rule 16(1) is not controlled by sub-rule (2) of Rule 16 and both sub rules operate differently. Counsel further submits that sub-rule (2) also does not make it condition for availing cenvat credit under Rule 16(1) that the goods returned should be re-manufactured or re-conditioned and sold to the original purchaser who returned the goods. Annexure - RI issued by the Ministry of Finance, Central Board of Excise & Customs states that the eligibility for availing cenvat credit facility under Rule 16(1) arises only if the goods after reconditioning or remaking are cleared to the same party who returned the goods. In order to appreciate the contentions sub-rules (1) and (2) of Rule 16 of the Central Excise Rules as it stood then, are extracted herein:-

Rule 16. Credit of duty on goods returned to the factory :- (1) Where any goods on which duty has been paid at the time of removal there of are subsequently returned to the factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such return in his records and shall be entitled to have CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2001 and utilise this credit according to the said rules.

(2) If the process to which the goods are subjected before returning does not amount to manufacture the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods returned under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or Section 4 or Section 4A of the Act, as the case may be.

We are of the view that sub-rule (1) and sub-rule (2) of Rule 16 operate differently. While sub-rule (1) entitles a manufacturer for duty credit for goods returned, sub-rule (2) provides for duty payment on clearance of goods after availing credit under sub-rule (1). The entitlement for credit under sub-rule (1) is absolute and the only condition is return of goods by the purchaser to the manufacturer for being re-made, refined, re-conditioned or for any other reason. Obviously it can be return of goods with a condition that it should be reconditioned or re-manufactured and returned to the same party. On the other hand the purchase can treat return as a sale cancellation and claim refund of price paid for the goods. In either case when goods are returned as defective goods warranting reconditioning or re-re-manufacturing or otherwise, the manufacturer is entitled to take cenvat credit as if such goods are received as inputs. Sub-rule (2) of Rule 16 says that if the process to which the goods are subjected before return does not amount to manufacture, the duty payable is equal to the cenvat credit taken under sub-rule (1) and on the other hand if the goods returned are subject to manufacture, then duty shall be payable at the applicable rate on the date of removal and on the value determined under sub-section (2) of Section 3 or Section 4 of Section 4A of the Act. This part of sub-rule only says that normal duty is payable on the re-manufactured product

cleared by the manufacturer. This has nothing to do with the credit taken under sub-rule (1). In other words, in order to avail cenvat credit under sub-rule (1) there is no requirement for manufacturer to clear the returned goods to the same party who returned the goods. We therefore declare that the appellant is entitled to claim duty credit on returned goods under sub-rule (1). The appeal is accordingly allowed cancelling the order of the Tribunal confirming disallowance of the claim.