(2016) 01 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 2986 Of 2005

M/s. I.B.P. Co. Ltd. APPELLANT

Vs

C.C.E. And S.T., Raipur RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:
Central Excise Tariff Act, 1985 — Section 36
Central Excise Rules, 1944 — Rule 11A, 13, 57A, 57C, 57CC

Citation : (2016) 01 CESTAT CK 0001

Hon'ble Judges : S.K. Mohanty, J;B. Ravichandran, Technical Member

Bench : Division Bench

Advocate : Priyanka Goel, R.K. Grover

Final Decision : Dismissed

Judgement

1. Brief facts of the case leading to this appeal are as follows:-

2. The appellant herein is engaged in the manufacture of Industrial explosives falling under Chapter heading 36 of the Central Excise Tariff Act, 1985.

The appellant availed Modvat Credit on inputs under Rule 57A of the erstwhile Central Excise Rules, 1944 read with Notification No.177/86 â?"CE.

The finished goods i.e. explosive manufacture by the appellant are removed from the factory under Notification No. 191/87 without payment of

Central Excise duty. Since the final product removed from the factory by availing the exemption contained in Notification 191/87, the Department

initiated show cause proceedings for recovery of the Modvat Credit taken on the inputs in terms of Rule 57 I read with section 11A of the Central

Excise Rule 1944. The Show Cause Notice issued in this regard was adjudicated vide Order-in-Original dated 21.01.2004, in dropping the proposals

made therein. On Appeal filed by the Revenue, the ld. Commissioner (Appeals) vide the impugned order dated 03.06.2005 has held that taking of

cenvat credit is not permissible, in the eventuality, when the final product cleared without payment of duty under Chapter X Procedure and the

provisions of Rule 57C of the Central Excise Rules, 1944 is invokable for denial of the Modvat benefit. Feeling aggrieved with the impugned order the

appellant has preferred this appeal before the Tribunal.

3. Ms. Priyanka Goel, ld. Advocate appearing for the appellant submits that removal of goods under Chapter X Procedure is neither exempted goods

nor attracts nil rate of duty. Thus, the embargo created in Rule 57C of the Rules will have no application and taking of Modvat credit on the inputs

used for manufacture of explosives removed under Chapter X procedure is correct and proper. To support her stand that Modvat benefit cannot be

denied to the appellant, the ld. Advocate has relied on the decision of this Tribunal in the case of Aureola Chemical Ltd. vs. Commissioner of Central

Excise, Indore reported in 2004 (175) ELT 148 (Tri.-Del.).

4. On the other hand, the ld. D.R. Shri R.K. Grover appearing for the respondent submits that the issue involved in this case is squarely covered by

the decision of this Tribunal in the case of Navbharat Explosive Co. Ltd. vs. CCE, Raipur reported in 2005 (187) ELT 218 (Tri. Del.).

5. We have heard the ld. Counsel for both the sides and perused the records.

6. Rule 57C of the Central Excise Rules, 1944 prohibits taking of cenvat credit on the inputs used in the manufacture of final product, which are

exempted from whole of duty of excise leviable thereon or are chargeable to nil rate of duty. In the present case, explosives removed from the factory

under chapter X Procedure is exempted from the whole of duty of excise leviable in terms of Notification No. 191/87 dated 04.08.1987. Since the said

Notification exempts explosives from payment of duty, in our opinion, the embargo created in Rule 57C of the Central Excise Rules, 1944 will be

applicable in the present case, and thus, Modvat credit on the inputs used in the manufacture of the said exempted product is not available to the

manufacturer. We find that in an identical case, this Tribunal in the case of Navbharat Explosive (Supra) has held that explosives removed without

payment of duty under exemption Notification, following procedure laid down in Chapter X of the erstwhile Central Excise Rules, 1944 is not

admissible in view of Rule 57C of the Rules. The relevant paragraph in the said decision is extracted herein below:-

â??3.It is not in dispute that the Appellants have removed the explosives without payment of duty under an exemption notification following

the procedure laid down in Chapter X of the Central Excise Rules, 1944. Rule 57C of the Central Excise Rules clearly provides that no

Modvat credit shall be available, if the final product is exempted from payment of whole of the duty of Excise or is chargeable to nil rate of

duty. As the explosives, their final product, are cleared by the Appellants without payment of duty, Rule 57C is applicable and they will not

be eligible for the benefit of Modvat credit. This was the view taken by the Larger Bench of the Tribunal in the case of Kirloskar Oil Engine

Ltd. v. CCE, Pune - 1994 (73) E.L.T. 835 (T) = 1994 (4) RLT 296. The Larger Bench of the Tribunal again considered this aspect in the case

of Orissa Extrusion Ltd. and observed that Kirloskar Oil Engine decision was not available when the Premier Tyre case was decided. The

Larger Bench held that â??the mere fact that at the time of taking the credit the Appellants did not know whether they manufacture and

clear the exempted final product using the inputs in question is no impediment to the application of Rule 57C.â? The decision in the case of

Alpha Drugs, relied upon by the Appellants, is not applicable to the present matter inasmuch as the goods were removed in the said decision

without payment of duty under bond in terms of Notification 49/94-C.E. (N.T.), dated 22-9-1994 issued under Rule 13 of the Central Excise

Rules, 1944. Rule 13 relates to export of goods under bond which are neither exempted from payment of whole of the duty leviable thereon

or are chargeable to nil rate of duty. In such a situation the provisions of Rule 57C are not attracted. The Punjab & Haryana High Court

has, therefore, held that without payment of duty is not the same thing as goods wholly exempt or goods chargeable at nil rate of duty,

therefore, the provisions of Rule 57C are not attracted.â? In the present matter it has not been disputed that the explosives are fully exempt

from payment of duty. In view of this, Modvat credit has been rightly disallowed to them. However, in view of the fact that the Appellants

were following the decision in the case of Premier Tyres and the period involved is 1993 before the decision passed by the Larger Bench of this Tribunal there is no case made out for imposition of penalty. Accordingly we set aside the penalty imposed on the Appellants. The

appeal is disposed of in these terms.â??

7. The decision cited by the ld. Advocate for the appellant is not applicable to the facts and circumstances of the present case inasmuch as in the said

decided case, the finished product manufactured is different and the interpretation placed relates to the Provisions of Rule 57CC; whereas, in the

present case, since the issue is squarely covered by the decision of this Tribunal in the case of Navbharat Explosive (supra), we are of the view that

the ratio of the said decision is applicable for deciding the issue in hand.

8. Therefore, we do not find any infirmity in the impugned order passed by the ld. Commissioner (Appeals). Accordingly, the appeal filed by the

appellant is dismissed.

(Dictated and pronounced in the open Court)

