(2023) 12 CESTAT CK 0044

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.41038, 41039, 41040, 41041, 41042, 41043, 41044, 41045 Of 2014

M/S. Needle Industries (India) Private Limited — APPELLANT

Vs

Commissioner Of Central Excise — RESPONDENT

Date of Decision : 19-12-2023

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 57D(2)

Citation : (2023) 12 CESTAT CK 0044

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : R. Janardhanan Pillai, Rudra Pratap Singh

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. The issue involved in all these appeals being the same, they were heard together and disposed of by this common order.

2.1 The appellant is engaged in the manufacture of Hand Sewing Needles falling under Chapter 73191020, Aluminium Knitting Pins under 76169990, Plastic Knitting Pins under 39269099, Safety Pins under 73192000. The main raw material/inputs used for manufacture of the above finished products are aluminium ingots. They avail credit of the duty paid on aluminium ingots used as inputs for manufacture of the finished products. The appellant also manufactures jig wires and jig rods out of the CENVAT Credit availed input, and these jig rods / jig wires were captively consumed without payment of duty availing the exemption of Notification No. 67/95 dated 16.03.1995 by classifying the jig rods and jig wires under Chapter Heading 76169990.

2.2 It appeared to the Department that the appellant is not eligible for the benefit of exemption of Notification No. 67/95 dated 16.03.1995 read with

CENVAT Credit Rules, 2004, as the definition of capital goods as per CENVAT Credit Rules, 2004 does not cover goods falling under Chapter Heading 76. Although, the jig rods and jig wires are ultimately used in manufacture of finished products, they are to be considered not as capital goods and therefore appellant is not eligible for exemption of duty. Show Cause Notices for different periods were issued proposing to demand the Excise Duty payable on jig rods and jig wires along with interest and for imposing penalties. After due process of law, the original authority confirmed the duty along with interest and imposed penalties. On appeal, Commissioner (Appeals) upheld the same. Hence, these appeals.

3.1 The ld. Consultant Shri R. Janardhanan Pillai appeared and argued for the appellant. The period involved in these appeals is from 01.07.2005 to 30.06.2011. The jig rods and jig wires are intermediate products manufactured by appellant using the CENVAT availed aluminium ingots. About 10% of cenvated aluminium ingots are used for the purpose of manufacture of jig rods and jig wires. Jig rods and wires were used during the process of manufacture of knitting pins for anodizing, as a support for the needles by holding the same in the wires so as to allow the electricity to pass through the needles for electrolysis to react with the chromic acid. The dutiable final product viz. Aluminium knitting pins cannot be manufactured without these intermediate product viz. jig wires and rods. The entire quantum of the intermediate product manufactured is captively used for the manufacture of the final product viz. Aluminium knitting pins falling under Chapter 76. Appellants claimed exemption in respect of the said intermediate product under Captive Consumption Notification No. 67/95 dated 16.03.1995. This Notification exempts both capital goods and inputs specified therein for captive consumption.

3.2 The authorities below have erred in holding that jug rods and jig wires fall under Chapter 76 and therefore cannot be considered as capital goods. They failed to take into consideration that jig rods and jig wires are used in relation to the manufacture of final products and are also to be considered as inputs. Further, the definition of capital goods in 2(a) of CENVAT Credit Rules, 2004, at clause (iv) states that 'moulds and dies, jigs and fixtures' are capital goods.

3.3 This issue was considered by the Tribunal in the appellant's own case for the period from February 1997 to June 2005 and the demand was set aside vide F.O.No. 40690-40694/2014 dated 11.08.2014. For the period from July 2011 to Aug 2015, though the adjudicating authority confirmed the demand, on appeal, the Commissioner (Appeals) set aside the demand following the Tribunal's order. Similarly, the demand for the period September 2015 to April 2016 was set aside by the Commissioner (Appeals). The demand raised in the Show Cause Notice for May 2016 to March 2017 was dropped by the adjudicating authority. It is submitted that the present appeals pertain to intervening period from July 2005 to June 2011. The Department cannot take a contrary stand as they have not filed any appeals against the orders passed by Commissioner (Appeals). The Ld.

counsel prayed that the appeals may be allowed.

4. The Ld. Authorised Representative Shri Rudra Pratap Singh appeared and argued for the Department. The meaning of 'jig' was explained by adverting to various definitions. Jigs are used by the appellant for positioning and holding during the goods in process of manufacture of needles. The final product cannot be manufactured without these jigs and moulds. It is submitted that as the appellant has classified them under Chapter 76, they do not fit into the definition of capital goods under CENVAT Credit Rules, 2004. The authorities have therefore rightly denied the exemption under Notification No. 67/95 dated 16.03.1995. It is prayed that the appeal may be dismissed.

5. Heard both sides.

6.1 The issue for analysis is whether the jig wires and jig rods are eligible for exemption under Notification No. 67/95 dated 16.03.1995 as an intermediate product manufactured by appellant and captively used in the manufacture of finished products.

6.2 The issue stands decided in the appellant's own case for earlier as well as subsequent periods. The Tribunal vide F.O.No. 40690-40694/2014 dated 11.08.2014, held as under:-

"4. The Ld. Consultant relied upon the decision in the case of Escorts Ltd. Vs CCE Delhi 2004 (171) ELT 145 (SC). In that case, the appellants were manufacturers of tractors. They availed Modvat credit in respect of the duties paid on inputs used in the manufacture of parts. The parts were cleared to another factory of the appellant without payment of duty by virtue of Notification No.217/86-CE dt. 2.4.1986. The parts were then used for manufacture of tractors on which duty was paid. The Revenue denied benefit of said exemption notification and Modvat credit was not admissible as the final goods, i.e. the parts were cleared without payment of duty. In this scenario, the Hon'ble Supreme Court held as under :-

"10. Mr. Lakshmikumaran relied upon the decision of this Court in the case of Collector of Central Excise, New Delhi v. Hindustan Sanitaryware & Industries reported in 2002 (145) ELT. 3 (S.C.), wherein, in respect of this very Notification, this Court has held that so long as duty is paid on the final product, the mere fact that duty was not paid on the intermediate product would not disentitle the manufacturer from the benefit of Notification No. 217/86-C.E., dated 2nd April, 1986. In that case, the input was plaster of paris, the intermediate product was moulds made out of the plaster of paris, the final product was sanitaryware. In our view, the facts of that case are identical to the facts of the present case. The ratio laid down therein fully applies to this case,

11. In this view of the matter, we set aside the impugned Judgment and the Order of the Commissioner of Central Excise. It is held that the Appellants will be entitled to Modvat credit on duties paid for the inputs used for manufacture of parts, so long as the parts are used in the manufacture of tractors on which duty

is paid. We clarify that in respect of parts which are sold in the open market and/ or used for manufacture of tractors on which no duty is paid, the benefit of the Notification No 217/86-C E., dated 2nd April, 1986 may not be available."

He also relied upon the decision of the Tribunal in the case of Shalimar Paints Ltd. Vs. CCE Calcutta 1994 (72) ELT 186 (Tribunal), wherein the appeal of the assessee was allowed. The relevant portion of the judgement is reproduced below :-

“6. The claim made by the present Appellants before the Collector (Appeals) that the resins are intermediate products in the manufacture of paints was rejected by that authority on the ground that they were fully manufactured products attracting classification under sub-heading 3907.50. The fact that alkyd maleic resins are classifiable under the Excise Tariff does not rule out their status or identity as intermediate products in relation to the manufacture of the final products, paints. The term "intermediate product is a relative concept and is to be understood in the context of the use of such products in the manufacture of the final product. If the alkyd resins etc. are cleared from the factory where they are produced, they are final products and the Tariff classification and Tariff becomes relevant for its assessment and clearance. But where such goods are not cleared outside but are captively consumed in the manufacture of the final products, they are intermediate products. Because they are classifiable under a Tariff Heading and are otherwise final products themselves is not inconsistent with their identity as intermediate products vis-a-vis the final product, paints. Rule 57D(2) specifically provides that credit shall not be denied on the ground that any intermediate product come into existence during the course of manufacture of the final product and that such Intermediate product is exempt from duty subject to the condition that the Intermediate products are used within the factory of production in the manufacture of final product on which excise duty is leviable. This specific provision has been issued referring to the exemption that may be available to an intermediate product. An exemption becomes necessary only in respect of a final product otherwise dutiable and not a purely intermediate product occurring in the reaction chamber in the course of manufacture. The intermediate products, in the context of Rule 57D(2), are those products which are used in the factory where they are produced in the manufacture of other final products. The decision of the Tribunal in Jenson & Nicholson is fully applicable to the present case the Modvat Scheme quite similar to the Credit Scheme under Rule 201/79.”

The Hon'ble Supreme Court in the case of Eastern Electro Chemical Industries Vs CCE 2005 (181) ELT 295 (SC) held as under:

"5. Having regard to the admitted facts on record, we are of the view, that the CEGAT was clearly wrong in its approach. The issue has been settled by this Court in Collector of Central Excise v. Ballarpur Industries Ltd.-1989 (43) ELT 804 (S.C.) where the construction of a similar Notification was in question. This Court held that there were four kinds of inputs which could be said to be ingredients (i) those which retain their dominant individual identity and character throughout the process and also in the end-product, (ii) those which, as a result of interaction with other chemicals or ingredients, might themselves undergo chemical of qualitative changes and in such altered form find themselves in the end-product, (iii) those which like catalytic agents, while influencing and accelerating the chemical reactions themselves remain uninfluenced and unaltered and remain Independent of and outside the end-products; and (iv) those which might be burnt up or consumed in the chemical reactions."

In the present case, we find that the jig wires and jig rods were consumed in the process of manufacture of Knitting Pins. The Commissioner (Appeals) also accepted that these goods are intermediate products. It is also noted that these goods are essential for the manufacture of final product.

5. In view of the above discussion, we consider that these Items are Intermediate products captively used in the manufacture of dutiable final product and therefore cenvat credit cannot be denled. Accordingly, we set aside the Impugned orders in respect of all the appeals except Appeal E/837/2006 and allow the appeals with consequential relief. In Appeal E/837/2006, we set aside the order of the Commissioner (Appeals) and restore the order of the adjudicating authority.”

6.3 The Commissioner (Appeals) for the subsequent period has followed the decision of the Tribunal to set aside the demand. The relevant para of Order-in-Appeal No. 248/2016 dated 09.11.2016 reads as under:-

9. The demand of duty on jigs and wires has been confirmed on the ground that these goods viz jig rods and jig wires falling under Chapter Heading 76169990 are not exempted from payment of duty by Notification 67/95 dated 16.3.95 as inputs as these are not essential items or materials required for production and whose presence/properties may be identified in the final products.

10. However on perusal of Notification 67/95 dated 16.3.95 it is seen that it exempts (a) Capital goods as defined under Cenvat Credit Rules 2004 from whole of the duty when manufactured and used within the factory of production, b) all goods specified under Table I falling under I Schedule to Central Excise Tariff Act 1985 (other than LDO HSD and Motor Spirit) which are referred to as "INPUT" manufactured in a factory and used in the factory of production in or in relation to manufacture of 'FINAL PRODUCT mentioned in Colum II of the said table viz all goods falling under the I Schedule to Central Excise Tariff Act 1985. The Jig rods and wires manufactured in the factory fall under 7616990 and therefore qualify to fall under Column I of the said table and the final products manufactured is knitting pins and other goods that fall under Chapter 73, 76 of CETA 1985 and fall under Column II of the said table and therefore the conditions of 67/95 as input under Sl.No.(II) is satisfied. The adjudicating authority in para 5 of the O-IN-O stated that the jig rods and wires are used in the process of manufacture of knitting pins for anodizing being a support for the

needles by holding the same in the wires so as to allow electricity to pass to the needles for electrolysis. He also mentioned that the jig wires are in spiral form and used to hold the aluminium needles in anodizing process. Thus there is no doubt that the jig wires and rods manufactured In the factory and falling under 7616990 are inputs used in the manufacture of knitting pins which are the final products.

11. Alternatively it is seen that the said goods also can be treated as Capital goods under Sl. No. (I) of the above Notification.

12. Cenvat Credit Rules 2004 defines Capital Goods' as follows: “Capital Goods" means:- the following goods namely:-

(i) All goods falling under Chapter 82, Chapter 84 Chapter 85, Chapter 90, heading no.68.02 and sub-heading no. 6801.10 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (II);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank used -(1) in the factory of manufacture of the final products but does not include any equipment or appliance used in an office.

13. Thus jigs and fixtures are also specifically mentioned under the definition of 'capital goods' under Cenvat Credit Rules 2004 without ascribing chapter heading.

14. In view of the above discussion under the provisions of law I am of the firm view that these goods viz jig rods and wires are covered under the definition of both inputs and 'Capital goods as defined under Notification 67/1995 dated 16.03.1995 and are eligible for exemption under the said notification. Therefore the demand of duty on these items cannot be legally sustained. Accordingly the following order is passed.”

7. After appreciating the facts as well as evidence placed before us and following the decision of the Tribunal in the appellant’s own case, we are of the view that the demand cannot sustain.

8. In the result, the impugned order is set aside. The appeals are allowed with consequential reliefs, if any.

