(2021) 03 CESTAT CK 0118

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 12093, 12094 Of 2018

Ram Ratna Wires Ltd And Anr. — APPELLANT

Vs

C.C.E. And S.T.-Silvasa — RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 6, 6(3), 57CC

Citation : (2021) 03 CESTAT CK 0118

Hon'ble Judges : Raju, Technical Member

Bench : Single Bench

Advocate : D. Kanjani

Final Decision : Allowed

Judgement

1. This appeal has been filed by M/s Ram Ratan Wires against order demanding reversal of Cenvat Credit under Rule 6(3) of the Cenvat Credit

Rules, 2004. Appeal has also been filed by Shri Sunil Rathi, Manager of the appellant firm.

2. None appeared on behalf of the appellant.

3. Learned Authorised Representative relies on the impugned order.

4. None appeared on behalf of the appellant. However, from the case record it is seen that the issue is simple and straightforward. The appellants are

clearing goods under notification 43/2001-C.E. (N.T.) dated 26/06/2001 for use in manufacture of goods to be exported. The goods are cleared to

National Electricals Equipments Corporation, Jaipur who in turn uses these goods for manufacture of goods to be exported. Similar issues has been

examines in various decisions of Tribunal and higher forums. In the case of Aarti Steels limited 2004 (166) E.L.T. 45 (tri- Del.), alloy and non alloy steel wires cleared under CT-2 certificate to cycle tyre manufacturers who exported goods at Nil rate of duty. In the said case, it was held as follows:

2. The Revenue has sought to deny the Modvat credit on the ground that non-alloy steel wires were cleared by the respondents under CT-2

certificates to the cycle tyre manufacturer who exported the tyres under the bond at nil rate of duty. But on this very ground the credit for

the earlier period was also sought to be denied to the respondents by the Department, and the same was not accepted by the Tribunal, vide

Final Order No. A/58/2001/NB, dated 12-1-2001. The validity of that order was challenged by the Department by moving a reference

application before the Honâ??ble High Court. But the said application was rejected. Thereafter the Department approached the

Honâ??ble Supreme Court in SLP (CC 8533). But the same had been also rejected. The learned Counsel has placed on record copy of the

Apex Court order. The learned Commissioner (Appeals) has, therefore, rightly followed the above said earlier order of the Tribunal

rendered in the respondentâ??s own case, allowing the Modvat credit to the respondents under similar circumstances. Therefore, I do not

find any illegality in the impugned order of the Commissioner (Appeals) and the same is upheld. The cross-objections of the respondents

accordingly also stand disposed of. The appeal of the Revenue is dismissed.

The said decision of Tribunal was upheld by Honâ??ble Supreme Court reported at Commissioner vs. Aarti Steels ltd. 2004 (167) E.L.T. A174

(S.C.). Similar issue was examined in the case of M/s Dharamsi Morarji Chemical Co Ltd. vs. Commissioner of Central Excise, Raigad 2010-TIOL-

586-CESTAT-MUM. In the said order, following was observed :

The Apex Court has held in that case the reversal of Cenvat credit of 10% under Rule 6 is applicable only and the cases where a manufacturer is

engaged in the manufacture of any final product which is chargeable to duty as well as any other final product which is exempted from payment of

duty or chargeable to nil rate of duty but in the instant case is not so as the final product is the sulphuric acid only and the same is dutiable product it is

not a exempted product and the same was cleared to the manufacture of fertilizers under CT-3 Certificate/bond hence the facts of the Ballarpur

Industries case are not applicable to this case, But the ratio laid down by the

Apex Court in that case is squarely applicable to this case also. Further, I

find that the ratio of the case of Aureola Chemicals Ltd. v. CCE, Indore reported in 2004 (175) E.L.T. 148 (Tri. - Del.) is squarely applicable to this

case wherein it was held that the appellants were clearing the Spent Sulphuric Acid under Chapter X Procedure to various manufacturers of fertilizers

against CT-2 Certificates. The obligation is on the receiver of such goods to use the same in a specified industrial process. In case, the goods received

under this procedure were not used for specified industrial process, the person who receive the goods is liable to pay the duty hence the goods cleared

under Chapter X Procedure are neither exempted nor said to be chargeable to Nil duty, thus duty is not payable under Rule 57CC. In this case also,

the goods cleared by the appellants against CT-3 bond to the fertilizers manufacturers cannot be term that the sulphuric acid is exempted product or

chargeable to nil rate of duty. Hence the provisions of Rule 6 of CCR, 2004 are not applicable to this case. Accordingly, the appellant is not required

to reverse 10% of the value of the goods cleared. The impugned order is set aside and the appeal is allowed with consequential relief if any.

5. Relying on the said decision, I find that the clearances made by appellant under notification 43/2001-CE (N.T.) on the strength of Annexure 45

cannot be held as exempted clearances and therefore, no reversal of Cenvat Credit is necessary. The appeal is allowed. The appeal is Shri Sunil Rathi

against the imposition of penalty is also allowed.

(Pronounced and Dictated in the open court)