Chandrapur Magnet Wires (P) Ltd., ... vs Collector Of Central Excise, Central ... on 12 December, 1995

Equivalent citations: 1996(53)ECC139, 1996(81)ELT3(SC), JT1995(9)SC568, 1995(7)SCALE220, (1996)2SCC159, [1995]SUPP6SCR593

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Bench: A.M. Ahmadi, Suhas C. Sen

JUDGMENT

Suhas C. Sen. J.

1. This is an appeal against an order passed by the Customs Excise and Gold (Control) Appellate Tribunal. There is no dispute about the facts of this case, which are recorded in the order of the Tribunal.

2. The appellants are engaged in the manufacture of enameled copper winding wire from duty paid copper wire bars under Chapter Heading 7403.12 of the Central Excise Tariff Act, 1985. They send the copper wire bars for job work under Rule 57F(2) of the Central Excise Rules, 1944 for converting them into copper wires above 6 mm diameter which is classifiable under Chapter Heading 7408.11. The job work is done after obtaining due permission from the authorities for operating under Rule 57F(2) as well as for the benefit of Notification No. 214/86-CE. The appellants manufacture from the copper wires of above 6 mm various other final products of copper viz. copper wires falling under Chapter Heading 7408.11 and Chapter Heading 7408.19 and copper strips falling under Chapter Heading 7408.90 which are liable to Central Excise Duty. They also manufacture enameled copper winding wires which fall under the Chapter Heading 8544.00. They avail credit of duty paid on copper wires of above 6 mm received from the job workers. They either sell the same in the market on appropriate payment of duty or convert the copper wire of above 6 mm into wires of below 6 mm. They sell these on payment of appropriate rate of duty or Captive consume them by transferring them to the Enamellings Section. The enameled copper winding wires are either cleared at nil rate of duty or on payment of appropriate duty under Notification No. 69/86-CE as amended. At the stage when the copper wires of less than 6 mm are cleared internally, the appellants reverse the MOD-VAT credit availed by them on the copper wire above 6 mm in their RG. 23, Part-II Register maintained for Chapter 74. After clearing the copper wire of less then 6 mm internally for enameling, the appellants manufacture the enameled copper winding wires which is either cleared at nil rate of duty or on payment of appropriate duty. The appellants while doing so take the MODVAT credit in their RG. 23A, Part-II Register maintained for Chapter 84 in so far as it pertains to the goods to be cleared on appropriate payment of duty. They submit that they do not take the credit of duty paid on the copper wire bars in their RG. 23A, Part-II Register for Chapter 84 in so far as it pertains to goods to be cleared at nil rate of duty as of less than 6 mm as they are aware of the quantity of goods to be cleared at nil rate of duty. They submit that the enameled copper winding

wires which are to be cleared at nil rate are manufactured only on specific orders. They state that they clear enameled copper winding wires either on payment of appropriate duty or at nil rate of duty under Notification No. 69/86-CE dated 10.2.1986 which at S. No. 1 & 2 lays down the condition for clearing the same either on payment of appropriate rate of duty or at nil rate.

3. The case of the appellants is that if a manufacturer clears various final products utilising duty paid inputs, according to Central Excise Rules, he was entitled to the benefit of MODVAT scheme and was entitled to get credit for the duty of excise paid on the inputs which were utilised for manufacture of final product. The credit amounts were adjusted against the duty leviable on the final product. As soon as the inputs were purchased, the duty paid on the inputs were entered in a register which had to be maintained statutorily recording the amount of credit allowable to the manufacturer.

4. The problem in this case arose because, some of the goods manufactured by the appellants were exempted from duty by notification No. 69/86-CE dated 10th February, 1986. This notification was amended by a further notification No. 106/88 dated 1st March, 1988 by which copper winding wires were exempted from payment of the whole of the duty subject to the condition that the final products were manufactured from copper wire bars of over 6 mm and also subject to the stipulation that-

(b) No credit of the duty paid on goods (a) (ii) above, used in their manufacture, has been taken under Rule 57A of the said Rules.

5. There is no dispute that the inputs which were utilised in the manufacture of the copper wires were duty paid and that the amount of duty paid on the inputs had been entered by the appellants to their credit in the ledger which has to be maintained under the Excise Rules. The credit amount can be utilised by the manufacturer towards payment of duty of excise leviable on the final products. Since the copper wires manufactured by the appellants had become duty free, there was no question of any adjustment of the credit amount against the duty payable on these copper wires. Moreover, Rule 57C specifically provides that credit of duty cannot be allowed if final products were exempt from payment of excise duty. Faced with this situation, the appellants reversed the credit entires of duty paid on inputs which were utilised for manufacture of the duty free copper wires.

6. The case of the Excise Department is that the reversal of credit entries are not permitted by the rules. The assessee is not entitled to remove the copper wires without payment of duty since credit of the duty paid on the inputs used in the manufacture of copper wire had already been taken in accordance with Rule 57A. Once appropriate entires have been made in the register, there is no rule under which the process could be reversed. Since the credit has been taken for the duty paid on the inputs in the ledger maintained by the assessee, the assessee cannot be heard to say that no credit of the duty has been taken by it under Rule 57A.

7. It is true that the assessee has not maintained separate accounts or segregated the inputs utilised for manufacture of dutiable goods and duty free goods, as should have been. The contention of the Department that in this situation, the assessee is not entitled to reverse the entries and get the

benefit of the tax exemption is a question which merits serious consideration. There is no doubt that the assessee should have maintained separate accounts for duty free goods and the goods on which duty has to be paid. But our attention was drawn to a departmental circular letter on this problem in which it has been clarified by the Ministry of Finance as under:

> 3. The credit account under MODVAT rules may be maintained chapter wise.

MODVAT credit is not available if the final products are exempt or are chargeable to nil rate of duty. However, where a manufacturer produces along with dutiable final products, final products which would be exempt from duty by a notification (e.g. an end use notification) and in respect of which it is not reasonably possible to segregate the inputs, the manufacturer may be allowed to take credit of duty paid on all inputs used in the manufacture of the final products, provided that credit of duty paid on the inputs used in such exempted products is debited in the credit account before the removal of such exempted final products.

8. The circular deals with a case where the manufacturer produces dutiable final products and also final products which are exempt from duty and it is not reasonably possible to segregate inputs utilised in manufacture of the dutiable final products from the final products which are exempt from duty. In such a case, the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid. This can be done only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before the removal of the exempted final products.

9. In view of the aforesaid clarification by the Department, we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. If this debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted product will stand deleted in the accounts of the assessee. In such a situation, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. In other words, the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken credit of the duty paid on the inputs used in manufacture of these goods.

10. The appeal is therefore, allowed. The order of the Customs, Excise and Gold (Control) Appellate Tribunal dated 17th May, 1995 is set aside. There will be no order as to costs.