
(2010) 04 P&H CK 0160

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of C. Ex.

APPELLANT

Vs

Metro Tyres

RESPONDENT

Date of Decision: April 26, 2010

Citation: (2010) 253 ELT 514

Hon'ble Judges: Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mehinder Singh Sullar, J.

The barely needed facts, relevant for disposal of present reference-petition at the instance of the revenue, are that the respondent-assessee M/s. Metro Tyres (for brevity "the assessee") was engaged in the manufacture of Moped and Cycle chains. The Moped chains were exported under bond without payment of duty and Cycle chains were exempted from payment of duty. The assessee was availing the Modvat facility, in respect of inputs used in the manufacture of Moped chains and no Modvat credit was availed, in respect of inputs, which were being used for the manufacture of exempt Cycle chains, as contemplated under Rule 57-C of the Central Excise Rules, 1944 (for short "the Rules").

2. Admittedly, the scrap generated during the manufacture of cycle chains became dutiable at the relevant time. Since the Moped chains were being exported without payment of duty, the Modvat credit availed, in respect of inputs got accumulated. In the wake of clearance of scrap generated during the manufacture of Moped as well as Cycle chains, the assessee paid duty partly through PLA and partly through the Modvat credit accumulated in RG 23A.

3. The revenue claimed that the duty ought to have been paid through PLA as the final product i.e. Cycle chain was exempted from duty and as such, no credit was

available, in respect of manufacture of the same. Accordingly, a demand was raised in this regard, for the relevant period, to which the assessee tried to explain that it has rightly and legally claimed the Modvat credit.

4. The explanation put forth by the assessee did not find favour and the Adjudicating Authority confirmed the demand. The appeal filed by the assessee was no doubt dismissed by the First Appellate Authority but the appeal preferred by it (assessee) was accepted by the Customs, Excise and Gold (Control) Appellate Tribunal, vide order dated 14-2-2000 2001 (136) ELT 396 .

5. The revenue did not feel satisfied with the impugned order of the Tribunal. Having completed all the codal formalities, ultimately, the Tribunal referred the following question of law for adjudication by this Court:

Whether the Modvat credit accumulated in respect of inputs used in the manufacture of dutiable goods exported under bond without payment of duty can be utilized towards the payment of duty on the waste arising out of the processing of inputs on which no credit was allowed/admissible as per Rule 57-C of Central Excise Rules, 1944 because of their use in the manufacture of exempted final product?

6. We have heard the learned Counsel for the parties and have gone through the record with their valuable help.

7. It is not a matter of dispute that utilization of the credit on the inputs used for manufacture of Moped chains is permissible towards payment of duty on scrap generated on processing inputs on which no credit was allowed, for the manufacture of exempted cycle chains as envisaged under Rule 57-F(4) and (5) of the Rules. Meaning thereby, the credit of specified duty allowed in respect of any inputs, can be utilized for the payment of duty on the waste, if any, arising in the course of manufacture of final product. No rule/law has been pointed out by the learned Counsel for the revenue to disentitle the assessee from the benefit of Modvat credit, under the present set of circumstances.

8. Admittedly, the assessee fulfills all other conditions/qualifications to avail the Modvat credit under the relevant rules. Therefore, we are of the considered view that the Modvat credit accumulated in respect of inputs used in the manufacture of dutiable goods exported under bond without payment of duty can be utilized towards the payment of duty on the waste arising out of the processing of inputs on which no credit was allowed/admissible. In that eventuality, the assessee was entitled to avail the Modvat credit, in the obtaining circumstances of the case.

9. In the light of the aforesaid reasons, the question posed is answered against the revenue and in favour of the assessee.

10. For the reasons recorded above, the instant reference petition is declined.