

Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

Dear Professional Colleague,

Cenvat credits of defective goods returned to the factory and used in process of re-manufacture.

We are sharing with you an important judgment of the Hon'ble High Court of Bombay in the case of ***Commissioner of Central Excise, Meerut - I Vs. Bhushan Steel & Strips Ltd [(2014) 47 taxmann.com 253 (Allahabad)]*** on following issue:

Issue:

Whether the Assessee was entitled to avail Cenvat credit of defective goods returned to the factory?

Facts & Background:

Bhushan Steel & Strips Limited ("**the Respondent**") is the manufacturer of C.R. coils/ sheets and G.P. Coils/sheets ("**Products**"). The Respondent received some of the defective Products from its buyers in the factory to be remade, refined and reconditioned. The Respondent availed Cenvat credit of Excise duty paid on such Products at the time of removal amounting to Rs.6,88,548/- during the period September, 1995 to March, 1996 under Rule 57-A read with Rule 57-G of Central Excise Rules, 1944 ("**the Rules**").

The Department issued a Show Cause Notice to the Respondent alleging that Products were finished goods and weren't raw material and, therefore, the Cenvat credit on the Products shouldn't be availed.

The Respondent submitted the reply that Products had undergone processing of redrawing to reduce thickness, softening, smoothing, hardness etc., resulting in new finished products, which have been cleared on payment of duty. Therefore, the Respondent was eligible to avail Cenvat credit on the Products treating them as raw material for the manufacture of new finished products.

The argument of the Respondent wasn't accepted by the Adjudicating Authority and the Cenvat Credit of Rs. 6,88,548/- was disallowed and the demand was confirmed. However, the demand was set aside by the Commissioner (Appeals) and the Hon'ble Tribunal. The Revenue preferred an appeal before the Hon'ble Allahabad High Court.

The Revenue argued that the Respondent should have claimed refund of the duty paid on such goods under erstwhile Rule 173L of the Rules.

The Respondent contended that the defective Products returned were inputs in the hands of the manufacturer and they are being used as raw material for manufacturing of another finished product. Therefore, the Respondent argued that they were eligible to avail Cenvat credit of the duty paid on Products manufactured by the Respondent but, returned due to defect, and then again used for manufacturing of another final product.

Held:

Mobile: +91 98106 04563; E-mail: bimaljain@hotmail.com

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The Hon'ble High Court held that the Respondent could claim the Cenvat credit in case of the defective Products returned and it cannot be denied merely due to the fact that the refund of the duty paid on the finished goods which have been returned being defective hasn't been claimed under erstwhile Rule 173L of the Rules.

Further, it was held that the defective Products have been subjected to the process of manufacture and as a result of such process a final product is obtained which is subjected to Excise duty. Hence, the Cenvat credit is admissible, if other conditions of the Rules are fulfilled and claim can't be denied on the ground that the Respondent would have claimed refund of duty paid under erstwhile Rule 173L of the Rules.

Hope the information will assist you in your Professional endeavors. In case of any query/information, please do not hesitate to write back to us.

Thanks & Best Regards

Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

Flat No. 34B, Ground Floor,
Pocket-1, MayurVihar, Phase-I,
Delhi – 110091

DeskTel: +91-11-22757595/42427056

Mobile: +91 9810604563

Email: bimaljain@hotmail.com

Website: www.a2ztaxcorp.com

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Mobile: +91 98106 04563; E-mail: bimaljain@hotmail.com