

Central Excise Amazing system of Indian Judiciary system this is a approx 24 years old case and the story goes on and yet to be settled

**Job worker paying duty & appellant availing higher notional credit -
Whether job worker could avail credit on raw materials purchased by
appellant from MMTC under actual user conditions not considered - matter
remanded: CESTAT**

Proceedings were initiated against the appellants by a SCN dated 8.6.1989. The allegation in the SCN revolves around the erstwhile rule 57B of the CER, 1944 which allowed a manufacturer to take an enhanced quantum of MODVAT credit of the duty paid in case he had sourced the "inputs" from a SSI manufacturer. The appellants are engaged in the manufacture of electric wires and cables and had filed the requisite MODVAT declaration u/r 57G of the CER, 1944 indicating that the inputs are Copper and Aluminium wire rods. The appellants procured the duty paid Inputs under regular gate passes in their own name and sent the same to their job workers by endorsing the original Gate passes in their favour.

The job workers availed credit of the duty paid on inputs and manufactured and cleared Copper and Aluminium wires at the concessional rate of duty as per Notification No. 175/86 dated 1.3.86 as amended. Upon receipt of the same, the appellant took enhanced MODVAT credit as per the provisions of para 5 of the Notification No. 175/86-CE read with Rule 57B of the CER.

The adjudicating authority held that the transaction between the job workers and the appellants is fully covered under the scope of Rule 57F(2) of the CER read with Notification No. 214/86-CE dated 2.4.86 and hence the higher notional credit taken by the appellant under Rule 57B of the Rules was not permissible for such transaction because they were sending their own goods for job work and receiving them back and hence ownership never changed hands. In the result, the adjudicating authority confirmed the demand and imposed penalties. This was in April, 1990.

The Tribunal vide final order dated 24.12.2002 allowed the appeals filed by the appellants. Revenue challenged the order before the Bombay High Court and vide order dated 13.10.2010 the matter was remanded to the Tribunal.

The Tribunal vide order dated 23.2.2011 again set aside the demand and allowed the appeals filed by the appellants.

Revenue again challenged the order before the Bombay High Court and vide order dated 24.2.2012 the High Court again set aside the Tribunal's order dated 23.2.2011 and remanded the matter to the Tribunal to take fresh decision on all questions as formulated in para 6 of the judgment dated 13.10.2010 passed by the Bombay High Court.

Para 6 of the judgment dated 13.10.10 is reproduced below: -

"6). The question as to whether the Central Cables Pvt. Ltd. had transferred the raw materials to the job workers, if transferred the goods for manufacture of intermediate product, then how the job worker could take credit of duty paid by

Central Cables Pvt. Ltd. on raw materials purchased from MMTC under actual user conditions has not been considered by the Authorities below. Similarly, if the respondent nos. 3 to 5 were the job workers and after manufacturing the intermediate products were liable to return the goods to the suppliers of raw materials, namely, Central Cables Pvt. Ltd. then where was the question of their returning the manufactured goods on payment of duty has not been considered by any of the Authorities below. If the job worker was not liable to pay excise duty while returning the manufactured goods to the supplier of raw materials, then the question of the supplier of the raw materials claiming full credit under Rule 57B of the Central Excise Rules, 1944 does not arise at all."

So, the appeals were taken up for a fresh decision on 17/10/2012.

The Bench observed -

"7. We have heard both sides and gone through the impugned order. The issue regarding the transfer of raw materials by Central Cables Pvt. Ltd. the appellants to job workers when the raw materials were procured from MMTC under actual user conditions has not been considered by the adjudicating authority. Now, the appellants produced the correspondence between the MMTC and the appellants regarding procurement of raw materials with reference to actual user condition. The contention of the appellants is that even in case the raw materials were procured under actual user condition, the same can be sent to the job workers for further processing. Therefore, there is no violation of the actual user condition.

8. We find that on the issue framed by the Hon'ble Bombay High Court on which the matter has been remanded, the adjudicating authority has not given any finding. The correspondence now produced by the appellants also requires verification. In view of this, we find that the matter requires reconsideration by the adjudicating authority in view of the observations made by the Hon'ble Bombay High Court in the order dated 13.10.2010 in Central Excise Appeal No.4/2003 and in order dated 24.2.2011 in C.E. Appeal No.25/11. We, therefore, remand the matter to the adjudicating authority after setting aside the impugned order to decide the issue afresh after affording an opportunity of being heard to the appellants."

The Bench also noted that since the SCN was issued in the year 1989, the adjudicating authority should decide the issue preferably within six months.