

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/4799/2004 – SM[BR]

Date 26/08/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S CAPITAL INDS.
95, MAHIPAL PUR, NEW DELHI
M/S CAPITAL INDS.

C.C.E. DELHI-II

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 1070 / 2009 –SM[BR] dated 14.5.2009
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. DELHI-II

C.R. BUILDING, I.P. ESTATE, NEW DELHI

2. Adv. / Consult

MR.NAVEEN MULLICK

B-388, MERA BAGH, NEW DELHI-63.

3 S.D.R

~~4 J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise, I.P. Estate, New Delhi

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Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT III

EXCISE APPEAL NO. 4799 OF 2004-SM

[Arising out of Order-in-Appeal No. 154-CE/2004 dated 7.6.2004 passed by the Commissioner of Central Excise (Appeals), Delhi-II, New Delhi]

For approval and signature:

Hon_ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Capital Industries

Appellant

Vs.

CCE, Delhi

Respondent

Appearance:

Shri Naveen Mullick, Advocate for the appellants;
Shri R.K. Verma, D.R. for the Revenue

Coram:

Hon_ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 14th May, 2009

FINAL ORDER NO. 1070 / 2009 sm(Br) **dated**

Per P.K. Das:

This appeal arises out of remand order of the Tribunal vide Final Order No. A/6/03/NB(S/M) dated 23.12.2002 whereby it was directed to decide the matter after examining the applicability of provision of Rule 57F(2) of the erstwhile Central Excise Rules, 1944 to be considered in depth before disallowing Modvat credit to the appellants.

2. Relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Pipe fitted with Flange and pipe fittings classifiable under Sub-heading 7318.10 and 7319.90 of the Schedule to the Central Excise Tariff Act, 1985. They received inputs namely, M.S. Pipes and Pipe fittings falling Sub-heading 7306.90. The appellants availed credit on the inputs. Pipes were welded with flanges and cleared under the description of Black Pipes with Flanges 260 mm and 360 mm for export under bond. The appellant utilized credit in respect of clearance of goods for home consumption. Show cause notice was issued proposing to deny Modvat credit of Rs. 2,28,055/- on the ground that the processes undertaken by the appellants do not amount to manufacture. Original authority confirmed the demand of duty and imposed penalty which was upheld by the Commissioner (Appeals). The Tribunal vide Final Order No. A/6/03/NB(S/M) dated 23.12.2002 remanded the matter to examine applicability of provisions of Rule

57F(2) of the Rules. In the de novo proceedings original authority again confirmed the demand of duty and imposed penalty which was upheld by the Commissioner (Appeals). Hence, the appellants filed this appeal.

3. Learned Advocate submits that the appellants undertook the process on the pipes were welded with flanges. The main contention of the learned Advocate is that inputs were used in exported goods and, therefore, they are eligible to avail credit under Rule 57F(2). He relied upon the decision of the Tribunal in the case of Rico Auto Industries Ltd. vs. CCE, New Delhi-III, reported in 2003 (57) RLT 653 (CEGAT-Del.). He also relied upon the Board's Circular No. 283/117/96-CX dated 31.12.96.

4. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that the main criteria of Rule 57F is that inputs must be used in or in relation to the manufacture of final product as required under Rule 57A of the Rules. He further submits that in the present case the appellants simply received pipes and exported the same goods after fitting with flanges. He submits that this activity does not amount to manufacture. He further submits that Rule 57F(2) would apply subject to the fulfillment of criteria as required under Rule 57A that inputs were used in or in relation to the manufacture of final product. He further submits that Board's circular and the case law relied

upon by the learned Advocate are in respect of utilization of credit, which was not relevant in the present case.

5. After hearing both sides and on perusal of the records, I find that the appellant received duty paid pipes and welded with flanges in their premises and cleared pipes with flanges for export. It is seen that the exported goods were cleared under bond and, therefore, they have utilized the credit towards payment of duty on final products for home consumption. The main contention of learned D.R. is that the process undertaken by the appellants does not amount to manufacture and, therefore, they are not eligible for credit. This issue has also been decided by the Tribunal in the case of Rico Auto Industries Ltd. (supra). The Commissioner (Appeals) observed that in view of that decision of the Tribunal in the case of Rico Auto Industries (supra) the credit cannot be denied on removing the inputs as such, either for home consumption or for export under bond. It has also been observed that Rule 57F(2) of the Rules would apply to particular fact or aspect of the Modvat scheme and not lays down the applicability of Modvat scheme. It is observed that Rule 57F(2) of the Rules may be seen in the context of pre-requisites prescribed under Rule 57A of the Rules. It is seen that the Tribunal in the case of Rico Auto Industries Ltd. (supra) held that inputs subjected to certain processes and then exported under bond even if the process does

not amount to manufacture credit is admissible in terms of Rule 57F(12) of the Rules and Board's Circular.

6. In the case of Rico Auto Industries Ltd. (supra) the assessee received duty paid inputs and undertook various operations like threading, tapping, turning, etc. and thereafter the same cleared as various parts and accessories of motor vehicles like break drums, break disc front, cylinder cover, end cover, hose coupling, etc. It was pointed out by the Revenue that the processes undertaken by them do not amount to manufacture and no product came into existence and, therefore, they are not eligible to avail credit. The Tribunal observed that once the goods have been exported under bond as such the Modvat Credit ~~undertaken~~ undertaken by the appellants can be used in the manner as provided under Rule 57F of the Rules. It has also been relied upon the Board's circular wherein it has been clarified that "clearance of inputs as such for export under bond can be utilized in the same manner as it is provided for a final product under Proviso to Rule 57F(4)". The relevant portion of the findings of the Tribunal is reproduced below:-

"We have considered the submissions of both the sides. Modvat Credit of the duty paid on the goods received by the appellants has been disallowed by the Commissioner under the impugned order on the ground that the processes undertaken by them do not amount to manufacture as no new product came into existence. Without

considering the aspect as to whether the processes undertaken by the appellants amounts to manufacture or not in terms of Note 6 Section XVI/XVII we are of the view that the Modvat Credit cannot be disallowed to the appellants in terms of provisions of Rule 57F of the Central Excise Rules. Sub-rule (2) of Rule 57F of the Central Excise rules provides that the inputs may be removed for home consumption or for export under bond. It has not been disputed by the Revenue that the goods in question were exported by the appellants under bond under Rule 13 of the Central Excise Rules. Once the goods have been exported under bond as such the Modvat Credit taken by the appellants can be used in the manner as provided under Sub-rule (12) of Rule 57F. This has also been clarified by the Central Board of Excise & Customs under Circular No. 283/117/96-CX dated 31.12.96 [reported in 1997 (18) RLT M27]. It has been clarified in the said Circular that _clearance of inputs as such for export under bond can still be treated at par with final products and the manner of utilization of Credit in such cases will be governed by the provisions of proviso to Rule 57F(4).” Accordingly the Modvat Credit is not disallowable to the appellants. We, therefore, set aside the impugned order and allow the appeal.”

7. In this context, clarification of the Board by circular dated 31.12.1996 is reproduced below:-

“Proviso to Rule 57F(4) deals with manner of utilisation of credit in cases of export of ‘final products’ or ‘intermediate products’ under bond. Export of inputs as such under bond were treated as ‘final product’ by virtue of ‘deemed manufacture’ clause (i.e. the expression as if such inputs have been manufactured in the same factory) under the erstwhile Rule 57F(1) (ii) which covered all such cases within the ambit of proviso to Rule 57F(4). This expression was omitted by Notification No. 28/95-C.E., (N.T.) dated 29-6-1995 with a view to simplify the clearance procedure, which has created a doubt in respect of utilisation of credit in such cases. It is not the intention of the Government to debar such manufacturer-exporters from utilising credit. Clearance of inputs as such for export under bond can still be treated at par with ‘final product’ and the manner of utilisation of credit in such cases will be governed by the provisions of the proviso to Rule 57F(4).

4. It is also observed that in case such inputs are cleared on payment of duty by debit in RG 23A Part-II account by virtue of Rule 57F(4)(iii), the manufacturer will be entitled for rebate under Rule 12(1)(a) of the Central Excise Rules. He is, however, put to disadvantage if he opts for export under bond procedure. The exports under ‘claim of rebate’ and ‘export under bond’ should be at parity, since, intention of both the procedures are to make duty incidence ‘nil’. It is also an

established principle that rules should be interpreted in a manner which do not render them redundant.”

8. In the present case, it is seen that the appellants undertook the process of welding of pipes with flanges at their premises and availed credit on pipes. There is no dispute that pipes with flanges were exported. It is also not in dispute that they were eligible for claiming the rebate. It is seen that they have exported goods under bond instead of claiming rebate. The Board already clarified that exports under ‘claim of rebate’ and ‘export under bond’ should be at parity. Therefore, submission of learned D.R. that the process undertaken by the appellants do not amount to manufacture and, therefore, they are not eligible to credit, is not sustainable.

9. In view of the decision of the Tribunal in the case of Rico Auto Industries (supra) and Board’s circular, I do not find any reason to deny credit. Accordingly, impugned order is set aside and appeal is allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

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