

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/Decision: 21.09.2017

Appeal No. E/53019/2016

[Arising out of the Order in Original No. ALW-EXCUS-O-I-O-COM-33/16-17 dated 26/08/2016 Passed by The Commissioner, Central Excise, Alwar (Rajasthan)]

M/s Federal Mogul Ignition products India Ltd. ... Appellant

Vs.

CCE Alwar ... Respondent

Appearance:

Present Shri Hemant Bajaj, Advocate for the appellant

Present Shri H.C. Saini, DR for the respondent

**Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble V. Padmanabhan, Member (Technical)**

FINAL ORDER No. 56802/2017

Per: Justice Dr. Satish Chandra

1. The present appeal is filed against Order in Original No. 33/16-17 dated 26/08/2016. The disputed period is June, 2014-April, 2015.
2. Brief facts of the case are that the appellant is engaged in the manufacture of 'spark plugs' and 'ignition coils' falling under Chapter 85 of the first schedule to Central Excise Tariff Act, 1985. The Appellant during the period under consideration, has imported automobile parts like 'spark plugs' and 'ignition coils'. On the imported items, the duty was duly paid which was accepted by the department. Now, the appellant claims the Cenvat credit but the same was denied by the department. Being aggrieved, the appellant has filed present appeal.
3. With this background we heard Shri Hemant Bajaj, the Ld. Counsel for the appellant and Shri H.C. Saini, Ld. DR for the revenue.

4. From the record, it appears that these 'spark plugs' and 'ignition coils' form part of vehicles and therefore, fall within the scope of Sr. No. 100 of the third schedule to the Central Excise Act, 1944. The processes carried out by the Appellant amounted to 'deemed manufacture' in terms of the provisions of Section 2(f)(iii) of the Central Excise Act, 1944, which provides as under:-

15[(f) "manufacture includes any process,-

18[(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,]

5. It is the submission of the Ld Counsel that when it is manufacturing activity then Cenvat credit will have to be allowed. He also submits that on the final product, duty has been paid so, the appellant is entitled for the Cenvat credit.
6. On the other hand, Ld DR justified the impugned order.
7. After considering the rival submissions, we are of the view that sparking plug is a part of the engine and the engine is the essential part of the auto mobile industries. Engine cannot start without sparking plug. So, the sparking plug and ignition coils are the part of auto mobile industries as per the definition of the imported items. On the said items, the duty was already accepted by the department.
8. It may be mentioned that in the case of *CCE & Cus., Surat v. Creative Enterprises, 2009 (235) ELT 785 (Guj)*, it was observed that even if the activity undertaken does not amount to manufacture, but duty is levied, the credit cannot be denied by mentioning that there is no manufacture. The Hon'ble High Court observed as under:-

"6. When one goes through the order of the first appellate authority, it appears that the respondent has been held to be

a manufacturer as defined in Section 2 (f) of the Central Excise Act, 1944. The appellate authority has taken into consideration the activities carried on by the respondent-assessee. The Tribunal is justified in holding that if the activity of the respondent-assessee does not amount to manufacture there can be no question of levy of duty, and if duty is levied, Modvat credit cannot be denied by holding that there is no manufacture."

The above ratio has been upheld by the Hon'ble Supreme Court in the case of CCE v Creative Enterprises, 2009 (243) ELT S120 (SC).

9. In view of above, we are of the view that when the duty was accepted by the Department than the appellant is entitled to the Cenvat credit. Thus, we setting aside the impugned order and allow the appeal.
10. In the result, the appeal filed by the appellant is allowed.

[Order Dictated and Pronounced in the open court]

(V.Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

Rekha