

CENVAT credit cannot be denied by the authorities once duty is paid by treating the activity as manufacture of goods— CESTAT

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Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata Bench has held that once duty is paid by the appellant treating the activity as manufacturing activity by the Department, then the availability of the CENVAT credit cannot be disputed. The CESTAT noted that the Revenue had disallowed the CENVAT credit availed by the appellant of duty paid on certain inputs on the grounds that the activities undertaken by the appellant did not amount to manufacture. Therefore, the Revenue demanded that such credit be reversed along with interest and penalty. The CESTAT stated that if the activity of the appellant does not amount to manufacture there can be no question of levying duty, and if duty is levied then the credit cannot be denied by holding that there is no manufacture.

Facts of the case

- The appellant¹ was engaged in the manufacture and sale of petroleum products, which were manufactured in various refineries situated in multiple countries.
- The appellant used crumb rubber modifier (CRM) for mixing with bitumen to produce crumb rubber modified bitumen (CRMB) after obtaining permission from the Jurisdictional Central Excise authorities. CRMB was cleared from refinery upon the payment of duty after availing CENVAT credit on handling services used during the production of CRMB.
- The Revenue disallowed the CENVAT credit availed on the CRM and handling service used within the refinery. Thus, the CENVAT credit disallowed was determined as payable by the appellant along with interest and penalty.
- Being aggrieved, the appellant filed the present appeal² before the CESTAT.

Kolkata CESTAT observations and ruling³:

- **Availment of CENVAT credit allowed even if activity undertaken does not amount to manufacturing:** When the CENVAT credit availed on the inputs stands utilised for payment of duty on the final product, there would be no requirement of reversal of the said credit even if the activity undertaken by the appellant does not amount to manufacture.⁴
- **CENVAT credit of bona fide duty is allowed:** It is a settled position that if the appellant has paid duty on a product, then availing of CENVAT credit of duty paid inputs used for manufacture of such products cannot be denied even if the appellant did not manufacture the goods.
- **CENVAT credit cannot be denied if duty is levied on final product:** If the

¹ Indian Oil Corporation Limited

² Excise Appeal No. 75721 of 2021

³ 23 August 2022

⁴ Vishal Precision Steel Tubes & Strips Pvt. Ltd. and Creative Enterprises

activity of the appellant does not amount to manufacture, there can be no question of levying duty, and if duty is levied, then the CENVAT credit cannot be denied by holding that there is no manufacture. Therefore, the CESTAT held that the impugned order disallowing the CENVAT credit availed by the appellant was not sustainable and is liable to be set aside.

Our comments:

The Apex Court has upheld the view taken by the Gujarat High Court that if the activity of the assessee does not amount to manufacture, there can be no question of levying duty, and if duty is levied, MODVAT credit can't be denied by holding that there is no manufacture⁵.

In the case of Ajinkya Enterprises the Bombay High Court had held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity does not amount to manufacture.

The Karnataka High Court has also held that there is no requirement of reversal of CENVAT credit once the final product is treated as dutiable and the assessee has paid the duty⁶.

The present ruling is line with the well settled principles and reiterates that if the bona fide duty has been paid on final product and accepted by the department then the availment of CENAVT credit cannot be disputed.

⁵ Creative Enterprises

⁶ M/s Vishal Precision Steel Tubes and Strips Pvt Ltd

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