

Central Excise: Barbed Wire is an input for Transmission Towers: CESTAT

This is a Revenue appeal.

The respondent is engaged in the manufacture of transmission line towers & parts thereof and avails Cenvat credit.

The process of manufacturing transmission line towers mainly consists of two major activities i.e. fabrication and galvanizing. During the scrutiny of the records, it was observed that the assessee had taken Cenvat credit on barbed wire falling under Chapter Heading No. 73130010 of CETA supplied by M/s. Reliance Wire Products, Atgaon, Thane. The barbed wire is a bought-out item and supplied in the same form to their buyers and neither any process on such barbed wire is carried out in the assessee's factory nor the barbed wire is used in the factory. The barbed wire is used for fencing the lower part of the transmission line tower after erection of the same at site to discourage general public from climbing such transmission tower. The barbed wire is nothing but used for safety and security of the transmission tower and has nothing to do with the functioning of the tower. Separate invoice is prepared for clearance of such barbed wire from the factory of the assessee and cleared separately from the factory. During the period from June 2004 to March 2009, the assessee had availed Cenvat credit of duty paid on such barbed wire to the tune of Rs.18,67,656/-.

It is alleged that the barbed wire supplied to the buyer does not qualify as input for the purpose of availing Cenvat credit.

SCN was issued and the credit was denied along with interest and imposition of penalty.

The Commissioner (A) set aside this order and allowed the appeal of the assessee.

Aggrieved, Revenue is before the CESTAT.

The AR submitted that barbed wire is not essentially required for the operational needs of the transmission line tower and, therefore, does not fall in the category of 'accessory' of the final product.

The respondent assessee submitted that barbed wire is an accessory of the tower and, therefore, the same is cleared along with the final product and has to be regarded as input in terms of Rule 2(k) of CCR, 2004; that the invoices issued by the respondent to sell the towers specifically included the value of the barbed wire in the assessable value; that duty has been paid on the whole amount including the value of the barbed wire and which payment has never been objected by the department. Reliance is also placed on the decisions in Jayshree Industries 1993 (63) ELT 492, New Chemi Industries Ltd. 2008-TIOL-891-CESTAT-AHM, Textile Corpn. Marathwada Ltd. 2008-TIOL-242-SC-CX.

The Bench after considering the submissions adverted to the definition of 'input' as contained in Rule 2(k) and observed that the definition of 'input' clearly shows that the input means and includes accessories of the final product cleared along with the final product.

Placing reliance on the decisions in Annapurna Carbon Industries Co. (AIR 1976 SC 1418) ["Accessories" are not necessarily confined to particular machines for which they may serve as aids.], Mehra Brothers v. Jt. Commercial Officer - 1991 (51)ELT173 (S.C.) [car seat covers are accessories to motor vehicles], PragatiSilicons Pvt. Ltd. 2007-TIOL-71-SC-CX [accessory is something of secondary or subordinate importance, something contributing in subordinate degree to a general result or effect; an adjunct or accompaniment]; Jay Engineering Works 1989 (39) ELT 169 (SC) [Items would qualify for credit if following answered in affirmative - (a) Whether the items are essentially required for the operational needs of the gadget; (b) Whether they are compulsorily supplied with the gadget at the point of delivery through the factory gate; (c) Whether its value is included in the value of the gadget at the factory gate.],

The Bench observed -

"...In my opinion, all the conditions are fulfilled in this case inasmuch as barbed wire is essentially required for smooth operation of the transmission tower and secondly, as per the terms and conditions of the agreements, it is necessary for the company to supply barbed wire along with transmission tower and thirdly, the description list of the goods sold is attached with the invoice copy, which clearly shows that the value of the barbed wire has been included in the assessable value and the duty has been paid on the whole amount. Since all the conditions are fulfilled, therefore in my considered opinion, the respondent is entitled to the credit of duty paid on barbed wire..."

The Revenue appeal was dismissed.