Collector of Central Excise Vs. Prem Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-12-1997

Reported in : (1997)LC196Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Prem Industries

Judgement :

1. In this Departmental appeal the Department has sought the setting aside of the order of the Collector (Appeals), Chandigarh dated 27-7-1993. The issue involved is admissibility for Modvat of challans issued by consignment agents for duty paid inputs.

2. The appellants are engaged in the manufacture of bolts and nuts, studs and steel bright bars falling under Chapters 72 and 73 of the Central Excise Tariff Act, 1985. They are also availing Modvat credit facility on duty paid inputs. During the period August, 1992 to November/1992 the respondents herein received 246.150 M.Ts of steel billets under transfer challans from one Salig Ram Shiv Prasad, Ludhiana who are said to be consignment agents of TISCO and took credit of Rs. 2,26,457.20 on the strength of a certificate given by them on the said transfer challans. According to the Department Salig Ram Shiv Prasad were not the authorised canalising agency notified by the jurisdic-tional Collectorate vide its Trade Notice No. 33/92-C.E., dated 4-8-1992 and as such the certificates, issued by them were not accepted as valid. A SCN was issued to the respondents on 14-1-1993 on the ground that the availment of credit was irregular.

3. The matter was adjudicated upon by the Assistant Collector who by his order dated 26-3-1993 held that the credit availed by the respondents on the strength of challans issued by the Salig Ram Shiv Prasad was not authorised in law and the credit taken by the respondents was disallowed. On appeal the Collector (Appeals) reversed the orders of the Assistant Collector. The Department has come up in appeal against the said order.

4. The Department has contended that according to Rule 57G(1) of the Central Excise Rules, 1944 the CBEC is empowered to prescribe the documents evidencing the payment of duty on the inputs on the production of which alone credit of duty on inputs can be taken by the assessees. The Board had by a Circular dated 23-1-1989 prescribed that challans issued by central canalising agencies, namely, MMTC, SAIL, TISCO can be accepted as evidence of payment of duty and when such endorsements are not made more than once. According to the Department the directions contained in the said circular are mandatory and non-fulfilment of the directions would lead to non-fulfilment of the conditions laid down for availing the Modvat credit. The Department contends that in the instant case the respondents had availed Modvat credit on the strength of certificate given by Salig Ram Shiv Prasad who were consignment agents and not the canalising agency prescribed by the Board. The Department contends that the Collector (Appeals) has not given due consideration to the mandatory directions of the Board's Circular in allowing the credit to the present respondents.

5. Ld. DR contended that the Collector (Appeals) order was liable to be set aside for not taking into account the mandatory nature of the Board's circular.

6. Appearing for the respondents Shri R. Saini, ld. Consultant submitted that the Collector (Appeals) has in the impugned order correctly determined the case in favour of the respondents. The Collector has rightly held that the consignment agent is authorised to certify the duty paid character of the inputs for the purpose, of availing credit. He had clearly found from the record that Salig Ram Shiv Prasad are consignment agents of TISCO who has been recognised as the handling agents under the relevant circular issued by the Board.

This fact has not been disputed by the Department. The Collector had after going through the records found that the challans indicate that M/s. Salig Ram Shiv Prasad were the consignment agents of TISCO and they were not acting independently. Thus, in principle they should be construed as acts of their principals, namely, TISCO. Having regard to these facts the requirement of Rule 57G were clearly fulfilled and there was no justification in denying Modvat credit to the respondents.

7. The ld. Consultant also referred to a recent order of the Tribunal in the case of Hero Cycle Works v. Collector of Central Excise, Chandigarh, Final Order No. A/241/94-NB. 1994 (71) E.L.T. 1017 (Tribunal). In the said case also M/s. Salig Ram Shiv Prasad were the suppliers of C.R. strips to the appellants in that case. The Tribunal had held that according to the terms of agreement between TISCO and Salig Ram Shiv Prasad, M/s. Salig Ram Shiv Prasad were to act as consignment agents for TISCO and were mainly responsible for the execution and documentation and to do the work on behalf of TISCO. The photocopy of challans also showed that M/s. Salig Ram Shiv Prasad were acting for TISCO. Challans also show details of the duty paid. In those circumstances, the Tribunal found no reason for not accepting the challans as proof of a payment of duty by TISCO.8. I find that the contentions raised by the Consultant have strong force. The Collector (Appeals) in his order has referred to the conditions of the Board's circular. Having regard to the fact that the challans issued by M/s. Salig Ram Shiv Prasad clearly shows that they were not acting independently but on behalf of TISCO as their principals and the exact quantity and duty involved on the inputs having been shown in the relevant documents, the essential requirements of the Board Circular issued by the Board as well as Rule 57G have been fulfilled.

9. I see no reason to dispute the findings of the Collector (Appeals) in the facts and circumstances of the case and on the basis of the records available in the file. The Departmental appeal has, therefore, to fail. The same is accordingly dismissed.