Bharat Electronics Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Feb-25-1997

Reported in : (1997)(71)LC364Tri(Bang.)alore

Judge : V Gulati, Vice-, T Nambiar

Appellant : Bharat Electronics Ltd.

Respondent : Cce

Judgement :

1. The prayer in the application is for dispensdation of pre-deposit of 23,65,479.34 which has been held to have been taken as Modvat Credit wrongly.

2. The learned Advocate for the appellants has pleaded that the learned lower authority has dismissed the appeals filed for the reason that the pre-deposit of 50% of the amount as above ordered by him was not made within the time stipulated by the learned lower authority. He has pleaded that the appellants had already taken a plea before the learned lower authority that the appellants had prima-facie a goods case on merits in respect of the items where Modvat Credit was denied for the reason that the tariff sub-heading given in the declaration was not correct. He has pleaded that while they had taken this plea they had not produced relevant document to support the same and would have done so in case an opportunity in this regard had been given. He has pleaded that this exercise has now been done and he has filed a set of papers before us to lay a basis for his plea. Since this is a fresh evidence which is now sought to be placed on record,

the same cannot be taken note of at this interlocutory state. The learned Advocate in this context has mentioned that this factor should be borne in mind while fixing the amount of pre-deposit taking into consideration their pleas.

He has pleaded the Modvat Credit had already been denied for the reason that certain items had not been declared by them or the relevant documents in respect of the inputs were not produced. He has pleaded the amount on that score will come about 20% of the demand. He has pleaded that the appellants would be willing to pre-deposit about 20% of the amount and has sought for remand of the matter subject to the pre-deposit of the said amount for consideration of the issue on merits. The remand, he has pleaded, may be made to the original authority as the exercise of correlation of the documents as also the examination regarding the nature of the goods is required to be done.

He has pleaded that the pre-deposit of 50% as ordered by the learned lower authority could not be made as the appellants were suffering from liquidity crunch and were also struggling to meet their commitments. He has pleaded that the appellant's organisation is a frontline organisation in the electronics field and has to engage itself for various national needs in a lot of R & D work apart from the commercial activity which is carried on by them. He has therefore pleaded that taking into consideration the overall commitment of the appellants in the national efforts for becoming self-sufficient in the field of electronics both for defence and also for the core areas of the industry namely the telecommunication industry, the amount of 50% asked to be deposited was high in the facts and circumstances of the case.

3. The learned JDR has pleaded that the appellants had not come on record with evidence to substantiate their case that they had taken the Modvat Credit correctly. No documents had been produced for this. The appellants themselves admitted that certain items are not declared. He has also referred us to the observations of Collector regarding pre-taxed profits earned by them. At this stage the learned Advocate has also referred us to the Balance Sheet for the year 1995-96 and has pointed out that the appellants had made a net profit of Rs. 20.7 crores on sales turnover of Rs. 1060 crores. He has pleaded taking into consideration the

nature of operations of the appellants the profit shown can be taken to be only marginal. He has also pleaded that a lot of their funds are tied up with the Government Departments and the appellants are always in a crunch situation in the case of management of funds.

4. We have considered the pleas made by both the sides. A perusal of the order of the learned lower authority shows that part of the denial of the Modvat Credit is for the reason of tariff sub-headings not having been shown correctly. The issue to be examined in this context is whether the description given by the appellant is adequate to communicate to the authorities as to the nature of the goods which are to be brought in as inputs. We have in a number of cases held that the purpose of declaration is to make the authorities aware as to the nature of the goods which are being brought in as inputs for use in the notified finished product. Any discrepancy in the tariff sub-heading can be ignored in case the description of the goods is adequate to communicate to the authorities as to the nature of the goods. The appellants have not placed with the help of the documents all the facts on record before the learned lower authority nor the authorities below have examined the issue in that light. The learned Advocate has pleaded that they are now in possession of the documents and records to be able to establish that the omission to note correctly the tariff sub-heading does not vitiate their claim for Modvat purposes. We observe however that no fresh evidence at this interlocutory stage can be admitted or taken note of. The appellants themselves are to be blamed for not coming on record with proper evidence and documents before the learned lower authority. On this account prima facie we have to hold that there is no infirmity in the order of the learned lower authority. The appellants have been asked by the learned lower authority to pre-deposit 50% of the amount held to be payable in terms of the original authority's order and the appellants had sought for time for this purpose and despite time having been given they failed to make the pre-deposit and the learned Collector therefore took action to dismiss the appeals for non-compliance under the provisions of Section 35F of the Central Excises and Salt Act, 1944. Taking into consideration the pleas of financial hardship the position as reflected in the Balance Sheet including that of Sundry Debtors which shows a figure of Rs. 426 crores and also taking note of their Loans and Advances which amounting to Rs. 202 crores and the Current Liabilities of Rs. 1006 crores,

we hold that the ends of justice will be served if the appellants are called upon to pre-deposit a sum of Rs. 7,50,000/-(seven lakhs fifty thousand) on or before 29th April, 1997 and report compliance by 30th April, 1997. Subject to the above to pre-deposit of balance amount of duty shall stand dispensed with and the recovery of the same stayed pending appeal. Since the appeals were not decided on merits no purpose will be served by keeping the appeals pending. We therefore with the consent of both the parties pass the following order and dispose of the appeals themselves: The issue has to be gone into in-depth based on the evidence which the appellants may produce before the learned lower authority and the appellant's plea has to be examined in the light of the various judgements of the Tribunal in regard to the omission in filing of the declaration.

We are of the view that subject to the pre-deposit as ordered above, the matter should be decided by the learned lower authority on merits after affording the appellants an opportunity of hearing. The appeals are therefore allowed by remand in the above terms. The appellants should report compliance of pre-deposit to the learned lower appellate authority. In case the compliance is not reported the learned lower authority will be free to dismiss the appeals for non-compliance of requirements of Section 35F of the Central Excises and Salt Act, 1944.