

Commissioner of Central Excise Vs. Hegal Capsule Industries Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-29-1997

Reported in : (1997)(71)LC596Tri(Mum.)bai

Judge : V T K.S.

Appellant : Commissioner of Central Excise

Respondent : Hegal Capsule Industries Pvt.

Judgement :

1. Shri V.K. Puri, the Id. SDR addressed arguments on the reference application. He submitted that in this case, the respondents have availed modvat credit under Rule 57A on inputs received under cover of a Gate Pass which has been endorsed three times, whereas, according to the circular No. 14/89 dated 17.4.1989 of the Central Board of Excise and Customs, only two endorsements on the gate pass is allowed for availing modvat credit. The Tribunal in this case, has allowed the appeal of the assessee by following the precedent Tribunal decision in the case of SBS Organics v. Collector , wherein the Tribunal held that having regard to the scheme of modvat credit and also the relaxation granted by the Board itself, the modvat credit cannot be denied only because inputs had been received under cover of Gate pass having more than two endorsements. The Id. SDR points out that there is another decision of the Southern Zonal Bench of the Tribunal reported in 1996 (14) RLT 489 in the case of Commissioner of Cen. Excise v. Shri Gopalkrishna Polly Industries, where after noting the S.B.S. Organics decision, the Tribunal had held that modvat credit could not be permitted

under Gate Pass which has been endorsed thrice.

The Tribunal in coming to this decision followed the Bombay High Court judgement in the case of Bombay Goods Transport Association v. UOI . In view of this it was urged that the point whether modvat credit can be allowed on the basis of gate pass which has been endorsed three times is a point of law to be referred to the High Court.

2. Shri S.S. Nagar, the Id. counsel for the respondents submitted that no point of law arises from the Tribunal's order which has followed the ratio of the precedent decision which squarely applies to the facts of the present case. The essential requirement for modvat purpose viz. the duty paid nature of the goods had been proved by the documents produced and in such a view of the matter, no point of law requiring reference arises out of the Tribunal's order.

3. Submissions made by both the sides have been carefully considered.

It is seen that the decision of the Southern Zonal Bench relied upon is that of Single Member, whereas, the precedent followed by the Tribunal in the impugned order is that of two Members.

Apart from that, we also find that the Bombay High Court judgement relied upon by the South Regional Bench related to a separate issue under modvat. What was challenged before the High Court was a circular dated 15.12.1992 issued by the Central Board of Excise & Customs and also the Departmental Trade Notice dated 27.1.1993 by which the earlier procedure relating to the issue of certified copy of Gate Pass where its original is lost in transit has been discontinued. Apart from this, the ratio of the SBS Organics case is not that the Gate pass having three endorsements straightaway be accepted, but it only lays down that the authorities need not mechanically deny modvat credit only on the ground that more than two endorsements have been made. In this context, it is also further significant that in several other decisions of the Tribunal, it has followed the ratio of the SBS Organic's decision. When the Board itself takes a decision for relaxation of the procedural requirement, the tribunal observed that it should be endeavour of the authority to extend modvat credit wherever the duty paid nature of the goods is

evident from the gate pass produced and the quantum of duty paid on the inputs could be ascertained from them. It is further to be noted that the Tribunal thereafter had held that the modvat credit on such gate passes endorsed more than twice can be granted subject to such verification that the department deems it necessary for ascertaining that there has been no availment of modvat by any other party in between. Therefore, it is clear that the Tribunal's decision relating to thrice-endorsed Gate Pass does not lay down the law that such gate pass should be straightaway accepted without question, but it should be subjected to enquiry and the benefit of modvat credit can be extended on results of such enquiry.

4. It is further found that a similar application seeking to raise the same point as a point of law for reference to High Court has been rejected by the Tribunal in the case of Collector v. Bansal Industries . The Tribunal observed- In questioning this decision, the Collector has referred to the provisions of Rule 57G(2) of Central Excise Rules, 1944 and contended that a thrice endorsed Gate Pass is not a valid duty paying document for the purpose of the said provision. We do not agree.... A Gate Pass mentioning the details relating to the manufactured goods, tariff item, quantity, duty paid and consignee is the duty paying document. It does not cease to be such duty paying document if it is endorsed more than twice.... What was decided was to reject the contention of the department that a thrice endorsed gate pass ceases to be evidence of duty paid nature of the goods. A gate pass with two endorsements has been permitted to be acceptable as valid document. The additional third endorsement cannot take it out of that category, if the bona fide nature of the endorsements could be gone into by the authorities to satisfy themselves about the validity of the claim within the terms of the Tribunal order. No question of law has arisen in the matter.

5. It is also noted that in the case of Collector v. Modern Malleables 1997 (18) RLT 247 : 1997 (69) ECR 123 (T), East Zonal Bench of the Tribunal and held that- The case of SBS Organics is a direct decision on the issue whether thrice endorsed gate pass is valid for the purpose of giving modvat credit or not and the Tribunal further observed that the reliance is therefore, better placed on that decision rather than on the decision of the Southern Zonal Bench of the Tribunal in the case of Gopalkrishna Polly Industries. The Tribunal further noted that the essence of the

Bombay High Court judgement in the case of Bombay Goods Transport Association v. UOI relied upon in the Southern Zonal Bench decision is that modvat credit would be available if duty paid character of the input is proved and that in fact the gate pass itself, according to the Tribunal, is a guarantee of the duty paid because the gate pass signifies the duty paid character of the goods and the same original gate pass was endorsed thrice.

This will further strengthen the view that no point of law for reference to the High Court arises out of the impugned order of the Tribunal in this case.

6. In this view of the matter, no question of law requiring reference to the High Court will arise. The application is rejected.

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