

B.T. Steels Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-07-1997

Reported in : (1997)(95)ELT130TriDel

Appellant : B.T. Steels Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This appeal has been filed by M/s. B.T. Steel Ltd. challenging the imposition of tax penalty of Rs. 20,000/- on them by the Collector Central Excise, Chandigarh by his order dated 30-8-1994.

2. Appearing for the appellants Shri Kulvinder Singh, Adv. submitted that the Department had alleged that the appellants had wrongly availed Modvat credit amounting to Rs. 2,06,990/- on a quantity of 206.990 MT of M/s. Steel Scrap on the basis of documents, which were allegedly bogus/fake or fictitious. The Department had also alleged that the endorsed gate passes shown as duty paying document had been issued by non-existent units or issued in favour of non-existing firms. The appellants were therefore charged with failure to take reasonable steps as contemplated under Rule 173Q(1)(bb) of the Central Excise Rules and the explanation appended thereto in as much as they had failed to satisfy themselves about the identity and bona fides of the manufacturers and suppliers. Ld. Advocate submitted that the entire amount of duty involved had already been debited through their RG-23 Part II and through their PL A which has also been noted in the impugned order at Para 11. The only question that required

consideration in the Appeal, the Advocate submitted, related to the impossibility penalty in the facts and circumstances of the case.

3. According to the appellants the inputs were received by them through brokers and on the basis of endorsed that passes. They therefore had no reason to doubt the genuineness of the documents or of the manufacturers or suppliers of the inputs received by them. They had made all payments through A/c payee cheques or A/c payee Demand Drafts as an added precaution on their part. He submitted that it was accepted trade practice in their trade to negotiate through brokers and reasonable steps had been taken by them to ensure about the authenticity of the documents as well as the genuineness of the manufacturers/suppliers. He submitted that there was no direct finding in the impugned order regarding any circumstance leading to a conclusion that there was any understanding between the appellants and the fictitious manufacturers or collusion between appellants and brokers for fabricating duty-paying documents. He relied on two recent orders of the Tribunal namely Order No. AO/65/96-NB, dated 15-7-1996 in the case of Khurana Steel Ltd. v. CCE, Chandigarh and final order No.A/89/95-NRB, dated 9-2-1995 in the case Sham Steel Co. v. CCE, Chandigarh in which under similar circumstances, the order relating to penalty had been quashed.

4. Appearing for the Department Shri Kilaniya, JDR, drew attention to the findings of the Collector in Paras 23 to 26 of the impugned order in which the Collector had observed that there is a legal obligation on the beneficiary of Modvat credit to take reasonable steps to ensure that he has taken the credit on inputs on which duty of excise has been paid. He reiterated the findings of the Collector (Appeals) in the impugned order and prayed for the rejection of the appeal.

5. Heard both sides. The question for decision falls in a narrow compass. Rule 173Q(1)(bb) read with the explanation to the Rule prescribes that the assessee should satisfy himself about the identity and address of the manufacturer or supplier, as the case may be, issuing the duty paying document. I find from Paras 4 to 6 of the Tribunal decision in Khurana Steel v. CCE, Chandigarh that similar question has been examined in detail in which previous order of the Tribunal in Sham Steel Co. Ltd. v. CCE, Chandigarh has been quoted with approval.

Advocate for the appellants submitted that though in the case of one of the suppliers located in Delhi appellants were aware of their existence, in the other case of the suppliers who were from Calcutta, they had no knowledge of their activities. In the case of supplier located in Delhi, they had corresponded with them and made payments directly. However, there was no occasion for them to suspect who were the first endorsee of the Gate Passes. In the Tribunal decision in Sham Steel Co. Ltd. (supra) it has been observed that in many cases, Gate Passes are not directly endorsed by the manufacturer to the assessee who finally takes credit as they pass through one or more intermediary units. In such situations it would not be reasonable to expect that the assessee should satisfy himself about the genuineness of the manufacturers of goods. The Tribunal had held that such a requirements would be impractical. The fact that suppliers are also included in the Explanation to Rule 173Q(1)(bb) was for this reason as the identity and existence of all the manufacturers may not be known to the assessee in all cases. In the instant case it is seen that the appellants had negotiated through brokers and had made payments to the manufacturers/suppliers through A/c Payee Cheques or the A/c Payee Demand Drafts in the name of the manufacturers/suppliers. The advocate had submitted that there was no reason for them to suspect the genuineness of the manufacturers/suppliers. I find some force in his submissions. The scheme of Modvat credit being a beneficial one and the fact that under the Explanation to the Rule 173Q(1)(bb) the obligation cast is on the person availing the credit and not on the Department, some leeway is envisaged in the matter by allowing a certain discretion to the assessee. In view of this, unless specific proof is produced to show that the reasonable steps expected of the assessee is found wanting by way of collusion or suppression of relevant information, penalty cannot be imposed merely for failure to ensure the bona fide nature of all the transactions.

6. Having regard to the foregoing the appeal is allowed and the impugned order set aside.