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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-15-1997

Reported in : (1998)(102)ELT201Tri(Mum.)bai

Appellant : Simplex Mills Co. Ltd.

Respondent : Commissioner of C. Ex

Judgement :
1. M/s. Simplex Mills Co. Ltd. received a consignment of Polyester staple fibre, which is an input for the manufacture of finished goods.

Staple fibre was manufactured by M/s. Terene India Ltd. who issued an invoice showing payment of excise duty to Reliance Industries Ltd., Mumbai (RIL). Reliance endorsed this invoice to Simplex Mills who took the credit on the basis of this invoice. The department issued notice on the ground taking credit on an endorsed invoice was not permissible.

The assessees replied and was heard in person by the Assistant Collector. The Assistant Collector whose order has been confirmed by Collector (Appeals) passed the order denying the credit. He said that Terene are the manufacturers of the goods; he did not accept the contention that Reliance Industries were the wholesale fibres of Terene. Hence this appeal.

2. It is the appellant's contention that Reliance is the actual manufacturer of the goods for which it utilised the plant and machinery of Terene. Terene has

subsequently been taken over by Reliance. It was contended that if it is held that Terene is a manufacturer, Reliance or M/s. Emsons Agencies P. Ltd. would be considered to be wholesale dealers. Simplex Mills actually received the goods. Therefore the invoice issued by Reliance (which is in addition to the invoice issued) by Terene would be a valid document as provided in notification 15/94 for taking the credit. It is argued in the third alternative that in any event the duty have been paid on the goods, which were received directly by the appellants from Terene. Therefore, failure to comply with the procedural requirements should not come in the way of taking credit.

3. The departmental representative's answer is that supply of raw materials by Reliance to Terene cannot make it the manufacturer of the goods; Reliance is itself a manufacturer and cannot be a wholesale dealer. Emsons Agencies could at the most be the wholesale dealer of Reliance but could not be the wholesale dealer of Terene the manufacturer. Therefore the invoices issued by Reliance, Terene and Emsons are not acceptable.

4. The basis for the contention that the actual manufacture was Reliance is a letter dated 6-11-1996 from it to the appellant. In this letter the appellant has been informed that Reliance manufactures staple fibres in the premises of Terene in 1933 under its Reliances control. This letter is in the form of additional evidence, which has not been taken on record. As such there has been no application for it and we decline to consider its contents.

5. It is also not possible to consider Reliance to be Terene wholesale dealer or distributor. Reliance has not held to be so; nor has Terene claimed that Reliance was its dealer. This arguments fall for want of substantiation.

6. The Board has prescribed in an invoice issued by wholesale distributor/dealer of the manufacturer as a valid document for allowing Modvat credit. If Emsons is a wholesale dealer, it must be a dealer of Reliance. The goods were sent to it by Reliance and not by Terene. The transaction was between Reliance and Emsons and not between Terene and Emsons. The invoice issued by Emsons would be acceptable for goods manufactured by Reliance. In this case, we have held the manufacturer to be Terene. Emson's invoice, not being issued in its capacity as

the dealer of Reliance, would not be acceptable.

7. The advocate for the appellant cited a number of decisions in support of his last argument. These decisions related to a period when gate passes were prescribing duty paying documents. The Board itself had authorised and endorsed the gate passes as valid duty paying documents whereas no such provision for endorsement of invoices which have replaced gate passes to duty paying documents. It is even questionable whether the goods came directly to the appellant's factory from Terene's factory. Terene's invoices declares that the goods have been sent to Reliance Industries Ltd., Thane, Ahmedabad, Kolhapur, Silvassa. The transport documents shows consignor as Reliance Industries, Thane and both Emsons and Simplex Mills as the consignee.

It is however true that the packing list for the consignment shows the recipient as Simplex Mills. It is not possible for us to therefore accepted the facts of this case, that procedural requirements must be totally waived and to hold that appellant had received the goods directly and therefore could take credit.

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