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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-19-1997

Reported in : (1998)(98)ELT543TriDel

Appellant : Hill Packaging Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Modvat credit of Rs. 2,66,547.94 has been disallowed to the appellants and a penalty of Rs. 10,000/- has been imposed upon them.

The appellants are engaged in the manufacture of HDPE and Polypropylene bags, sacks and tapes etc. and were during the period working under the Modvat Scheme. As per the facts on record a quantity of 9 MTs. of polypropylene was cleared by its manufacturer IPCL vide gate-pass No.7684, dated 23-10-1992 and equivalent was cleared vide gate-passes No.400 to 404, dated 2-12-1992 to their own depot at Samaipur Badali, New Delhi. From there, the said material was transferred to M/s. Gaura Enterprises and the relevant gate-passes were endorsed in favour of M/s. Gaura Enterprises. The appellants purchased the entire quantity of 9 MTs. covered by the above each gate-pass in two consignments of 2 MTs. and 7 MTs. As per the appellants when the first consignment of 2 MTs. of inputs was received by them gate-pass was not endorsed in their favour though number of the gate-pass was mentioned in the invoice issued by M/s. Gaura Enterprises. As the inputs were not received along with any duty paying documents no Modvat credit was availed by the appellants on receipt of the first consignment of 2 MTs. It was only subsequently when the another consignment of 7 MTs. was procured by them from M/s. Gaura Enterprises, they received the gate-pass covering the consignment in question duly endorsed in favour of the appellants in respect of the entire quantity of 9 MTs., that is, 2 MTs. purchased by the appellants earlier and the 7 MTs. purchased subsequently. This is the position in respect of both the gate-passes. Modvat credit has been disallowed by the authorities below on the ground that the earlier consignment of 2 MTs. in respect of each gate-pass was not covered by any duty paid documents at the time of receipt of the same and it was only subsequently that the endorsed gate-pass was produced by the appellants. In respect of the remaining 7 MTs. of the inputs the Modvat was disallowed on the ground that the gate-passes in question have been endorsed more than once and as per the Board's circular, credit is not available on the basis of multiple endorsed gate-passes. Appearing for the appellants, Shri R. Santhanam, learned Advocate submitted that the issue is no more res integra and is covered by the various decisions of the Tribunal. He drew the attention of the Bench to the Tribunal's decision in the case of C.C.E., Bhubaneswar v. Multilayer Composites Pvt. Ltd. 1994 (69) E.L.T. 575 (ERB) and submitted that the facts in the instant case are at par with the facts in the above referred judgment of the Tribunal and it was held by the Tribunal that full quantity covered by the gate-passes having been received by the appellants though in piecemeal, Modvat credit would be admissible on the receipt of the gate-pass. He also referred to the Tribunal's decision in the case of C.C.E., Nagpur v. Noble Explochem Limited reported in 1996 (88) E.L.T. 372 in respect of his submission that the documents can be received after the receipt of the goods and the appellants have taken the Modvat credit only after the documents showing payment of duty on the inputs was received by them. As regards the denial of Modvat credit on the ground of multiple endorsements on the gate-passes, he referred to the judgment in the case of S.B.S.Organics Pvt. Ltd. v. C.C.E. & Customs 1990 (45) E.L.T. 701 and submitted that the said judgment is being followed consistently by the Tribunal. In the circumstances, he prayed for allowing the appeal.

Learned JDR, Shri V.R. Sethi reiterated the reasoning and findings of the lower authorities on the merits of the goods. As regards the penalty, learned JDR argued that the same is imposable in the facts and circumstances of the case inasmuch as the appellants have not followed the due procedure of obtaining subsidiary gate-passes in respect of the above quantity received by them.

2. I have considered the submissions made by both the sides. I find that there is no dispute as regards the correlation of the inputs received by the appellants in two part consignments of 2 MTs. and 7 MTs. being covered by the gate-pass in question. In the circumstances, there only remains a procedural lapse. I also take note of the fact that the Commissioner (Appeals), Ghaziabad in his subsequent Order-in-Appeal No. 205-CE/MRT/96, dated 24-5-1996 as also the Assistant Collector of Central Excise, Dehradun vide his Order-in-Original dated 13-5-1997 have dropped the proceedings against the appellants in cases of similar nature. No penalties have been imposed by the Assistant Collector while dropping the proposal for disallowance of Modvat credit. Taking into consideration the entire facts and circumstances, I allow the appeal with consequential relief, if any.