

Commissioner of C. Ex. Vs. Spark Engineering Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-10-1997

Reported in : (1998)(104)ELT580Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Spark Engineering Industries

Judgement :

1. The department appealed to the Collector (Appeals) from the order of the Assistant Collector, holding that the assessee was correct in taking Modvat credit of the duty paid on steel products manufactured by Steel Authority of India (SAIL for short), evidence of such duty paying delivery challan cum invoice issued by SAIL. The contention of the department before the Collector (Appeals) was that the Board had prescribed as valid document for taking credit, the delivery challan cum invoice. Hence the document on which credit would be taken is the original delivery challan cum invoice, (challan for short) and not a copy thereof. The assessee represented before the Collector that it was the practice of SAIL to issue to the customer, the buyer of the goods, one copy of the challan that was made; that this was the document on which credit was being taken, and had been taken all over the country.

In support of its contention it produced a letter dated 7-11-1987. The Collector has disposed of the appeal by passing the following order.

"I find ... that certificates issued by SAIL/TISCO in respect of the indigenous inputs can be accepted for granting Modvat credit. The practice of SAIL, as reported in their reference No. PAL/AC/013/9797, dated 7-1-1989 addressed to the Respondents and signed for SAIL by the Asst. Manager (I) is that it is the practice of this company to issue only carbon copy of challan and which is provided to their customers. I also note from the photo copies of the challan submitted by the Respondents in respect of the disputed consignments, that it is marked 'Customers copy'. This being the factual position, the said original copy of the 'Customers copy' (irrespective of the fact that it is only the carbon copy of the invoices issued by the SAIL) can be accepted as a valid duty paying document as prescribed in the said Trade Notices. Any other interpretation, e.g. as held by the Collr. C. Ex. in the Review Order, would negate the benefit allowed in these Trade Notices." 2. So far so good. The extract of the order indicates that the Collector (Appeals) had accepted the respondent's contention. However, he goes on to add as follows :- "However, this position shall prevail only if it is ascertained by independent reference to the SAIL that their customers are given only one carbon copy of the invoices containing the citation 'Customers copy'. This is with a view to ensure that there is no duplication of claims made on the basis of different copies of the challan/invoices supplied to the customers.

Subject to positive verification of the factual position as claimed by the Respondents, the depttl. appeal would stand rejected. If the position is otherwise and more than one copy of the challan/invoices is supplied to the customers by SAIL, the impugned order shall stand confirmed.

3. Thus the Collector takes away in this portion of the order extracted what he has given in the earlier portion of the order. As I understand his order he first says that he is satisfied that SAIL issues only a copy to its customers, and that it is this document which was in the mind of the Board which it prescribed the delivery challan cum invoice of SAIL as a valid duty paying document. Immediately after that, he says that "this position shall prevail" only if independent reference to SAIL confirms that the Customs is given only a carbon copy. In other words the Collector (Appeals) expresses his inability to account now the contents of the letter of SAIL. The relevant paragraph of that letter reads as follows :- "As per the

practice followed only one copy of challans are issued to the customers. This is accepted by Excise department all over the country. Therefore we express our regret to issue original challans to the customers as required by you." 4. This letter is clear and categorical enough. It is not clear what the Assistant Collector was expected to do. The advocate for the respondent attempts to explain that this was only liberty given to the Assistant Collector but that is hardly an answer. If the Collector (Appeals) was satisfied with the correctness of the statements made by SAIL, such liberty would not be necessary and in fact it would be improper to submit his judgment on the matter for verification by the lower officer. I have therefore to accept the submissions of the departmental representative that the order of the Collector is not an order at all. It does not dispose of the appeal and merely sends the whole thing back to the Assistant Collector for verification. What is the Assistant Collector to verify? It would no doubt have been argued by the assessee before him that since the Collector (Appeals) as in the words reproduced above has said that the SAIL's letter represented the correct position no further verification was called for or required.

The order, in short, does not decide anything and for this reason alone this has to be set aside.

5. The question posed by the department still remains. The carbon copy of the invoice could not be equated with the delivery challan cum invoice as specified in the Trade Notice. Prima facie I would accept this contention. When the circular of the Board referred to the delivery challan cum invoice it would normally refer to the original and not the copy. If it was intended that the copy would be the relevant document, it would have said so. But we are to view the matter in the context of the regulations relating to Modvat credit. The rule refers to various documents such as gate pass, AR 1, b/e, invoice etc.

under Rule 57G which are the relevant documents with regard to payment of duty. In many of these cases credit was taken, not on the original but that Modvat was taken on the basis of duplicate copy of gate pass and not the original. It is only the triplicate copy and (perhaps quadruplicate) copy of the bill of entry, which is given to the importer, the original and duplicate being retained by the Customs. The

evidence of payment of duty is therefore the evidence contained in the triplicate. It is therefore permissible to conclude that when the board referred to the delivery challan cum invoice it would have referred to have the copy thereof and not the original. This no doubt what is intended in the letter of November, 1989 of SAIL when it says that only copies of challans are issued to customers. It is possible that the original never leaves the office of the SAIL and not given to the customers. In that event, it would be reasonable to conclude that credit should be given on the copy given by the customer.

6. However while we are not sure as to how many copies are made by SAIL of these invoices, its hazards to the revenue if credit is allowed on a carbon copy has to be considered in this context. If there was more than one copy of the challan, which could be made use of, it is not improbable that credit would be taken on both these copies. It would be necessary, in my view to inquire into the matter in detail. It is only SAIL who would be in a position to clarify how many copies are issued and what precautions are taken to ensure that only one copy goes into general circular. After all it must be at the initiative of SAIL and TISCO that the Board's circular must have been issued. The advocate for the respondent says that he will collect all this information, and such further information as may be required by the Collector (Appeals) to whom I propose to send this matter for passing a clear and categorical decision, and that appropriate affidavits from responsible authorities in SAIL will be produced in support. The department is at liberty to adduce such material as it considers in support of its case. The Collector (Appeals) shall pass appropriate clear and categorical order according to law.

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