

Commissioner of Central Excise Vs. Crocodile I Pvt. Ltd.

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Court : Chennai

Decided On : Jun-07-2013

Judge : The Hon'Ble Mrs.Justice Chitra Venkataraman

Appellant : Commissioner of Central Excise

Respondent : Crocodile I Pvt. Ltd.

Judgement :

In the High Court of Judicature at Madras Dated:

07. 06.2013 Coram The Honourable Mrs.JUSTICE CHITRA VENKATARAMAN and The Honourable Ms.JUSTICE K.B.K.VASUKI C.M.A.No.636 of 2008 The Commissioner of Central Excise No.1, Foulkes Compound Anaimedu Salem .. Appellant Vs.

1. M/s. Crocodile (I) Pvt. Ltd No.2, FCI Complex Karamadai 2. Customs, Excise and Service Tax Appellate Tribunal Southern Regional Bench, Shastri Bhawan Avenue 1st Floor, Haddows Road Chennai .. Respondents Civil Miscellaneous Appeal against the order dated 23.8.2007 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench at Chennai in Order No.1040/2007. For Appellant : Mr.K.Ravi Ananthapadmanabhan Central Govt. Standing Counsel For Respondent : Mr.K.S.Venkatagiri -----

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.) This Civil Miscellaneous Appeal is filed at the instance of the Revenue as against the order of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench at Chennai. The above appeal was admitted on the following substantial questions of law:- ".(1) Whether the Tribunal is correct in setting aside the penalty imposed under Rule 13 of CENVAT Credit Rules, 2002 when the assessee made an offence by retaining this wrongful CENVAT credit for a period of six months which resulted in unwarranted financial accommodation in contravention of the CENVAT Credit Rules, 2002 and are liable for penal action as per Rule 13(1) ibid?. (2) Whether the Tribunal is correct in setting aside the penalty imposed, when the question of ".imposition of penalty equivalent to the amount of duty evaded under Section 11AC of the Central Excise Act, whether maximum or not and of discretion to impose lesser amounts". itself is pending in appeal before the Supreme Court in a series of appeals by the department?."

2. It is seen from the facts herein that the assessee is a manufacture of readymade garments falling under Chapter sub heading 62.01 of the Central Excise Tariff Act, 1985. After communicating with the jurisdictional Superintendent and after considering the reply, the Revenue held that credit taken to a sum of Rs.15,07,414/-, was in excess of the admissible credit. However, subsequently, the assessee reversed the wrongful credit taken and paid the duty thereon. Evidently, this was before the issuance of show cause notice. Thus, though the original notice issued on 16.4.2004 proposed levy of interest under Section 11 AB of the Central Excise Act, 1944 and penalty under Rule 13(1) of the CENVAT Credit Rules, 2002, on the above facts, the Assistant Commissioner dropped the proposal on the levy of interest on penalty. On appeal by the Revenue, by virtue of the powers under Section 35E (2) of Central Excise Act, 1944, the Commissioner reversed the order of the Assistant Commissioner. He proposed the imposition of penalty under Rule 13(1) of the CENVAT Credit Rules, 2002 and interest under Rule 12 of CENVAT Credit Rules 2002. The assessee objected to this that the notice failed to point out how the penal provisions were attracted in the case, more so in the context of payment of the duty even before the issue of the notice in terms of Section 11A(2B) of Central Excise Act, 1944. A cursory reading of the notice shows that except for mere reference to the proposal to levy penalty under

Section 13(1) of CENVAT Credit Rules, 2002, there is no discussion as regards the various requirements which are necessary for the purpose of levy of penalty under Section 11AB of Central Excise Act 1944.

3. A reading of the order of the Commissioner shows that he confirmed the levy of penalty observing that the reversal of the credit made by the assessee after detection of the case clearly established the intention to cause wrongful gain warranting imposition of penalty. Thus even if any credit was reversed before the issuance of show cause notice, it being made after the detection, penalty was leviable under Section 11AB of Central Excise Act, 1944. Thus, ultimately the Commissioner confirmed his proposal to levy penalty of Rs.1,50,000/- under Rule 13 of the CENVAT Credit Rules, 2002 and confirmed the levy of interest at Rs.1,24,150/-.

4. Aggrieved by this, the assessee went on appeal before the Customs, Excise & Service Tax Appellate Tribunal. Considering the merits of the case, the Tribunal found that the assessee reversed the credit on 23.10.2003 after getting intimation from the department as to the admissibility of the claim. In terms of Rule 12 of Cenvat Credit Rules, 2002, the assessee was rightly asked to pay the interest. However, it was also an admitted fact that the assessee did not utilise the credit and reversed immediately on receipt of the intimation about the error. In the circumstances, in the absence of any other material to show the intent to cause wrongful gain as required under Section 11A of the Central Excise Act, the levy of penalty was cancelled by the Tribunal. Aggrieved by this, the present appeal by the Revenue.

5. Learned standing counsel appearing for the Revenue placed reliance on the decision reported in 2009 (238) E.L.T. 3(SC) UNION OF INDIA v. RAJASTHAN SPINNING & WEAVING MILLS and submitted that but for the detection by the Revenue, the assessee would not have reversed the entry. In the circumstances, going by Section 11AB of the Central Excise Act, on the facts the levy of penalty is liable to be imposed.

6. We do not agree with the submission of learned standing counsel for the Revenue. The decision of the Apex Court reported in 2009 (238) E.L.T. 3(SC)

UNION OF INDIA v. RAJASTHAN SPINNING & WEAVING MILLS referred to the decision of the Apex Court reported in 2008 (231) E.L.T. 3 (S.C) UNION OF INDIA v DHARAMENDRA TEXTILE PROCESSORS, wherein, the Apex Court pointed out that the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable, the concerned authority would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under sub-section (2) of Section 11A. In so holding, the Apex Court held that in every case of non payment or short payment of duty, penal provisions cannot be automatically invoked, in other words, the conduct of the assessee in each of the case, before imposing penalty, has to be looked at on the bona fides of the assessee as regards his claim which otherwise would not be sustained in law.

7. As far as present case is concerned, it is no doubt true that the assessee originally made the claim for CENVAT credit. As rightly submitted by the learned counsel for the assessee, the same was availed on the basis what had been stated so by the department. However, subsequently, on receipt of intimation from the department in October 2003, the assessee reversed the credit immediately thereon and paid the duty. In the background of the said facts, we may look into the show cause notice issued by the adjudicating authority as well as by the Commissioner. On a reading of the show cause notice, we can safely hold that it is bereft of any details which are required to be considered for the purpose of levy of penalty under Rule 13(1) of the CENVAT Credit Rules 2002. In the absence of any specific ground alleged, we do not find any justifiable ground to disturb the order of the Tribunal.

8. Applying the law declared by the Apex Court in the decision reported in 2009 (238) E.L.T. 3(SC) UNION OF INDIA v. RAJASTHAN SPINNING & WEAVING MILLS, we reject the appeal filed by the Revenue, thereby confirming the order of the Tribunal. The Civil Miscellaneous Appeal is dismissed. No costs. bg To 1. The Commissioner of Central Excise No.1, Foulkes Compound, Anaimedu, Salem 2. Customs, Excise and Service Tax Appellate Tribunal Southern Regional Bench, Shastri Bhawan Avenue 1st Floor, Haddows Road Chennai