

Collector of C. Ex. Vs. Associated Switch Gears (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-13-1997

Reported in : (1998)(62)ECC228

Appellant : Collector of C. Ex.

Respondent : Associated Switch Gears (P) Ltd.

Judgement :

1. The appeal by the Commissioner of Central Excise, Meerut is against the order-in-appeal dated 7-10-1986 passed by Commissioner of Central Excise (Appeals), Ghaziabad setting aside the order-in-original dated 13-2-1986 passed by Assistant Collector of Central Excise, Division II, Ghaziabad whereby the last mentioned authority had held that Modvat credit of Rs. 26,100/- taken by M/s. Associated Switch Gear (P) Ltd. respondents in the present appeal was not admissible and could not be allowed under Rule 57H of Central Excise Rules. He accordingly demanded the said amount under Rule 57-I of Central Excise Rules, 1944. This order was set aside by the Collector (Appeals) on appeal by the assessee (respondent herein) holding inter alia, that the delay in the application under Rule 57H was no ground to disallow credit as that was only an additional request. He also held that the assessee "should have been allowed Modvat credit on inputs lying under Rule 56A on 1-3-1986 and the audit objection that the same should not be allowed prior to declaration under Rule 57G is incorrect as Rule 57G itself came into force on 1-3-1986 and how could credit under Rule 56 be utilised otherwise". This order has been challenged in the present appeal by the

department contending that when the respondent filed declaration under Rule 57G on 10-3-1986 they should have simultaneously applied for permission under Rule 57H for allowing credit on inputs lying in balance and contained in finished goods lying in balance at the time of filing declaration under Rule 57G. But such application under Rule 57H was filed only on 22-2-1988. That credit already taken by the respondent was not allowable as duty on the inputs had been paid prior to 31-1-1986.

2. Shri A.M. Tilak, learned DR argued in support of the appeal stressing the point that the disputed credit was taken by the respondent without filing necessary declaration under Rule 57H as the inputs in question had been received in respondent's factory prior to the filing of the declaration under Rule 57G and that duty on inputs covered by two of the three duty paying documents involved had been paid before 31-1-1986.

3. In reply, it was pointed out by Shri J.S. Agarwal that respondent was eligible for proforma credit under Rule 56A prior to the introduction of Modvat scheme with effect from 1-3-1986. In such cases, the requirement that duty should not have been paid before 31-1-1986 is not applicable. Moreover, the credit in question was taken by them in March 1986 at the initial stage of the Modvat scheme and no show cause notice was issued in time by the department. The first order disallowing the credit was set aside by the Collector (Appeals) remanding the matter for de novo decision. It was contended by Shri Agarwal that no show cause notice was issued in time for the alleged wrong taking of the credit in March 1986. He, therefore, pleaded that the department's appeal be dismissed.

4. Shri Tilak, learned DR gave a rejoinder that the show cause notice issued on 20-9-1995 with reference to the credit taken on 27-3-1995 and not the date of the original taking of the credit which was in March, 1986. Respondent reversed the credit objected to by the department on 9-9-1987. They again restored the credit without any permission from the department on 27-3-1995 and this was the subject of show cause notice dated 20-9-1995 and adjudication vide order dated 13-2-1996. The order is correct and the notice was also not barred by limitation.

5. I have considered the submissions. The dispute relates to Modvat credit of Rs. 26,100/- taken by the respondent in March, 1986 soon after the introduction of the Modvat Scheme. Rule 57H relates to the taking of credit in respect of inputs received prior to the filing of the declaration under Rule 57G. In terms of Sub-rule (2) of Rule 57H, no credit of duty was allowable if duty had been paid on the inputs on or before 31-1-1986. This is strongly relied upon by the department as duty had been paid for the inputs covered by two of the three duty paying documents before 31-1-1986. But this cut off date of 31-1-1986 for payment of duty on the inputs is not applicable where credit of duty in respect of them was allowable under any rule or notification prior to 1-3-1986 when used in the final products. This exception was relied upon by Shri Agarwal in his argument. I find that the Collector (Appeals) has recorded in his impugned order the submission of the (present) respondent that but for the fact that the inputs in question were received by them only in March, 1986 they would have otherwise taken proforma credit on the same. The Collector (Appeals) had also observed in his impugned order that apart from application under Rule 57G respondent had also applied under Rule 57H for regularisation which was before the de novo adjudication. That de novo adjudication was ordered by Collector (Appeals) on an earlier appeal in the same matter as there was no show cause notice. There was an audit objection alleging wrong taking of credit. In the impugned order dealt with now, Collector (Appeals) has, as noted earlier, held that the audit objection that credit should not be allowed, was incorrect. The delay in the application under Rule 57H was held to be no ground to disallow the credit, under Rule 57H(1), as it stood in March, 1986 credit of duty for inputs received before filing the declaration under Rule 57G was allowable by the Assistant Collector if he was satisfied that such inputs were lying in stock or were received in the factory on or after 1-3-1986 and that such inputs were not in the manufacture of final products cleared on or after 1-3-1986. Hence the application for necessary order under Rule 57H should have been filed simultaneously with the declaration under Rule 57G to enable the Assistant Collector to be satisfied as required under Rule 57H(1). Hence the finding of the Collector (Appeals) that the delay in the application under Rule 57H was no ground to disallow credit is not correct but in the present case there was no dispute regarding the receipt of the inputs after 1-3-1986 and the clearance of the

final product after that day. The objection about duty having been paid for some of the inputs prior to 31-1-1986 does not survive in view of the admissibility of proforma credit prior to 1-3-1986. Thus, on merits the order of the Collector (Appeals) merits acceptance. The question of time bar becomes irrelevant. The order is accordingly upheld and the appeal is dismissed.

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