

Asian Consolidated Indus. Ltd. Vs. Cce

Asian Consolidated Indus. Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/12848

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-12-1998

Reported in : (1998)(76)LC309Tri(Delhi)

Judge : S Peeran, S T G.R.

Appellant : Asian Consolidated Indus. Ltd.

Respondent : Cce

Judgement :

1. In both these appeals common question of law and facts are involved, hence they are taken up together for disposal as per law.

2. The appellants are engaged in the manufacture of "Empty Tin Containers" and they were availing MODVAT Credit in respect of inputs such as tin plates, aluminium foils, paints and varnishes etc. They were issued with show cause notice dt. 9.6.1994 demanding duty for availing wrongly MODVAT Credit amounting to Rs. 8,29,749/- vide RG-23A, Part II entries No. 834 & 835 dt. 13.12.1993 and entries No. 874 to 877 dt. 18.12.1993 on the strength of Bills of Entry No. 11470 to 11471 dt.

29.10.1993 and Bill of Entry No. 11469 dt. 29.10.1993 and Bills of Entry Nos. 11587, 11588 and 11589 all dt. 30.9.1993 respectively. It is alleged that although the above mentioned Bill of Entries cover goods, namely, 'Electrolytic Tin Plate in Coils' which had been cleared from Bombay Port, but however, it appeared from

RG-23 Pt. I of the party that the goods namely, 'electrolytic tin plate in coils' had never been received in the factory. They appeared to have taken credit of the above mentioned entries in respect of tin plate sheets received from M/s Midas Steel Processing Pvt. Ltd., Bombay in terms of statement of Shri Lalit Kapoor, Sr. Manager (Materials) in his statement dt.

19.5.1994. It was also alleged that since the consignments of 'Tin plate sheets' were received in the factory when the duty paying documents were not covered by the above mentioned Bills of Entry is inadmissible.

3. In respect of the show cause notice dt. 5.9.1994 the same allegations were made for recovery of amount of Rs. 7,83,629/- in respect of MODVAT Credit availed on 8.3.1994 and 29.3.1994 vide entries No. 1321 to 1326 all dt. 8.3.1994 and 1391 to 1394 all dt. 29.3.1994.

4. The appellants by their reply stated that they had filed the requisite declaration specifying the Electrolytic Tin Plate as one of the inputs used in the manufacture of metal containers. The goods had been purchased on High Sea Basis and had been cleared after payment of Customs duty by filing requisite Bills of Entry and also after making the payment of CVD. Since the arrangement of high precision shearing was available with M/s Midas Steel Processing (P) Ltd. at Bombay itself, therefore, the goods were taken delivery at Bombay. The imported tin plate in coils had been entrusted to the said party for shearing process. The inputs electrolytic tin plates under all the Bills of Entry stated in the show cause notices were taken delivery simultaneously and after an interval of one month delivery of similar goods under Bills of Entry No. 11469,11470,11471 all dt. 29.10.1993 were also taken. Thus they had taken total quantity of 189.540 M.T. under these Bills of Entry were given for shearing to the said party.

Since the shearing is a time consuming process and it was not physically possible to bring the entire sheared material in one lot therefore, the goods were brought in, stages and when the sheared up material was ready for transportation. Consignment-wise materials were brought into the factory with proper transport documents (GR and Challans), the same were recorded in the statutory account in the form of RG-23A Part I as particulars tabulated in the chart enclosed by them.

They state that all the details about the receipt of the materials and utilisation thereof for the manufacture of the resultant final product had been furnished to the concerned Range Supdt. The procedure of said receipts of input and its utilisation was never objected upon by the proper officer. The receipt and utilisation of the input as per RG-23A Part I and manufacture and clearances of final product there from as per annexure filed by them. They state that they had received the said inputs and therefore, the inputs after shearing process having been received by them under proper documents therefore, the MODVAT Credit had been taken in terms of the rules. There was improper utilisation. They state that since M/s Midas Steel Processing Pvt. Ltd. is not a manufacturer of electrolytic tin plates in coils but is merely engaged in shearing activity of such goods for which some of the copies of the invoices were enclosed along with show cause notices.

They state that M/s Midas Steel Processing Pvt. Ltd. had raised job charges invoices for shearing charges only. The ownership of the goods i.e. electrolytic tin plates were never transferred to the said party and have remained with them. They state that the goods did not loose the original form of the electrolytic grade of the inputs even after shearing process and remains as an electrolytic grade in plates and therefore, the allegations that different type of material than one originally imported is not factually correct. The entire quantity of electrolytic tin plate which had been received by them on high seas sale basis, or advance licence basis, under the prosper Bill of Entry and subsidiary certificates in lieu of GP I's under Rule 57G of the CE Rules and that therefore, there is no case made out against them.

However, the authorities were not satisfied with the explanation and hence they confirmed these and also imposed penalty of Rs. 40,000/- in Appeal No. E/1353/96-NB and Rs. 50,000/- in Appeal No. E/1354/96-NB.6. The Learned Advocate strongly relied on the judgment rendered by the Tribunal in the similar case as in the case of Collector of Central Excise v. Roshan Tin Printers it has been held that Rule 57F(2) is a procedural requirement and the procedural requirement is meant for establishing proper co-relation with the duty paid inputs initially received, till they go into the final product. So long as there is no dispute that the duty paid materials received by the suppliers have come to the hands of

the respondents after they were cut into sheets, the procedural non-compliance cannot be held against them for denying the substantive benefit of the Mod vat facility. It has also been held that MODVAT benefit is not deniable, if co-relation between the said inputs and those which has gone into the final product is not in dispute. However, the Tribunal has held that imposition of penalty for violation of Rule 57F(2) can be imposed. In this case the Tribunal confirmed the penalty of Rs. 1500/- on the assessee. The Learned Advocate submits that for the purpose of transportation the imported item had to be sheared and brought to Delhi. Therefore, there was no dispute about the same item having been received by them. Hence the ratio of the Tribunal is completely applicable to the facts of the case He also submitted that the matter could be remanded to the original authority and they will be able to satisfy through records that the same goods had been received after shearing.

7. The learned DR strongly opposed the prayer for remand as according to them there is no co-relation between the goods and that they had taken the MODVAT Credit in terms of the Bill of Entry before the goods had been received and therefore, the non-grant of MODVAT Credit on the ground is fully justified including imposition of penalty.

8. On a careful consideration of the matter, we notice that the Tribunal has ready adjudicated on a similar issue and has held that so long as the inputs and the final product could be co-related the benefit of MODVAT cannot be denied for procedural violation of Rule 57F(2). It has also held that penalty can also be imposed for non-compliance of provision of the said rules. In the present case, it is asserted by the appellants that it was not possible for them to have transported the entire material to Delhi from Bombay unless it was sheared and made transportable. The goods were in huge coils and it required shearing for easy transportation purpose. They state that the same goods had reached them and that the party had only received job worker charges. They had submitted that the entire records can be verified. However, the lower authorities have not accepted the pleas on the ground that there is no co-relation between the inputs and the main product and what has been received by them is sheets and not aluminium tin plates in coils.

9. On a careful consideration of the submissions and on perusal of the judgment cited, we are of the considered opinion that the matter is required to go back to the original authorities for de novo consideration to re-consider the pleas raised by the appellants that the manner in which it is imported in coils was not in a transportable condition and it required to be sheared for the purpose of easy transportation and it is the same inputs which has been received by them and that all the documents are co-relatable. However, they admit that there has been a procedural violation for which the nominal penalty could be imposed.

10. Taking into consideration the overall facts and circumstances of the case, we remand the matter to the original authority to re-hear the appellants and give them an opportunity to establish their case in terms of the ratio laid down in the case of Roshan Tin Printers. The matter could be determined in the light of the said ratio. The appeals are allowed by remand.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com