Modipon Ltd. Vs. Collector of Central Excise

Modipon Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/12895

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-1998

Reported in : (1998)(60)ECC378

Judge : S Peeran, S T G.R.

Appellant : Modipon Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This appeal arises from Order-in-Appeal No. 184/94 dt. 16.8.1994, passed by the Collector (Appeals), confirming the order of the Assistant Collector. The Assistant Collector in Order-in-Original confirmed a demand of Rs. 6,06,501/- in terms of the show cause notice dt. 8.7.93, wherein it was alleged that the appellants are engaged in the manufacture of Synthetic Filament Yarn falling under heading No.5402 and 5403 of Central Excise Tariff Act, 1985 and were availing MODVAT Credit inter alia on DMT & MEG. During the month of Jan., 93 they took credit in respect of the above amount on the inputs on the strength of Photo copies/True copy/certified copies of GP lis submitted by them along with copies of RG-23A Part-I and Part-II and monthly returns. The MODVAT Credit on Photo copies/True Copies/certified copies documents was not admissible to the party as per the provision of Rule 57G of CE Rules, 1944 read with Central Board of Excise & Customs, New Delhi's letter F.No. 267/ 69/91-CX-8 dt. 15.12.92. The show cause notice gave details of the GP is and the amounts which totalling up to the amounts stated above for the recovery. The Assistant Collector by a brief order

on the basis of provisions of the said rule and on the basis of said circular confirmed the duty demands. The Learned Collector also confirmed the findings on the same grounds.

2. It is the contention of the appellants that the original gate passes had been mis-placed and they took the MODVAT Credit on the basis of copies of the gate passes duly certified by the Range Suptd. In-charge of the factory of production on 21.12.92 and 29.12.92.

4. The Learned Advocate, Ms. Malini Sud's only submission is that they are entitled to avail MODVAT Credit on the basis of certified copies of the gate passes in the event of loss of gate passes which is the case in the present appeal. It is stated that the Suptd., in-charge of the factory of production had duly certified the same and for merely procedural violation, the substantive benefit of the grant of MODVAT cannot be denied. She also submits that the party was prepared to furnish indeminity bond in this regard. She relied on the following judgments to support her contention.Eveready Industries India Ltd. v. CCE 5. Shri Sanjeev Srivastava, the Learned DR submits that the mandatory provisions of the rule cannot be violated and Board by its circular has clearly clarified that only original documents shall be accepted. In support of his contention, he relied on the following citations.Chetna Industries v. CCE 6. On a careful consideration of the submissions we notice that the MODVAT Credit has been denied on the certified copies of GP Is which had been issued in respect of mis-placed original gate passes on the ground that such certified copies of gate passes are not permissible under Circular No. 25/92.

7. We notice from the judgment of Chetna Industries (supra) that this case pertains to a period earlier than issue of Circular dt. 15.12.92.

In this judgment, the Tribunal has held that MODVAT Credit cannot be taken on the basis of photocopy of gate pass certified to be a true copy because the officer certifying a document to be a true copy can certify any number of copies presented before him, so long as he is satisfied that they are correct reproduction of the original documents.

It has been held that Rule 57G stipulates the documents under which credit can be taken. Credit is allowed only against the original documents for valid reasons, because if the credit can be taken on photocopies, any number of credits can be availed of by different parties or by the same parties any number of times. It has been held that for that reasons a proper procedure has been prescribed so as to meet extreme situations of loss of original documents. This procedure cannot just be dismissed as merely one of a technical requirement and on that ground, the Tribunal held that the MODVAT Credit taken by the party is required to be disallowed.

8. In the case of Markfed Cement Pipe Plant (supra) the Tribunal held that MODVAT Credit is admissible on the basis of photostate copy of gate passes while granting the benefit. The Tribunal looked into the earlier judgment of the SRB rendered in the case of Ind-Ital Chemicals Ltd. v. CCE, as reported in 1995 (11) RLT. 403 wich had in turn followed the earlier judgment rendered in the case of CCE v. Vivin Controls (P) Ltd. as . In all these judgments of the SRB, it had been held that the Division Bench of the Bombay High Court in the case of Bombay Goods Transport Association v.Union of India as had also emphasised that a liberal view will have to be taken for the documents relied upon and proved to be authenticated and accepted covering the goods in question in a situation where the original document was lost.

Therefore, it was held that taking all these factors into consideration and also keeping in mind the fact that the department is not disputing the authenticity or reliability of the photostate copy of the gate passes to the goods in question and also keeping in mind the fact that the original gate pass was not lost is not challenged, therefore, the prayer of the appellants was accepted.

9. In the case of Control Switch Gear Co. Ltd. (supra), it was held that the Circular No. 44/86 dt. 29.10.1986 contemplates that manufacturer who issued the gate pass should ask the Suptd. to issue a copy of the gate pass to certify that it has been issued in lieu of the gate pass which had been lost for the purpose of taking credit. It is noted that it was not the claim of the assessee that a proper request was made or that the copy of the gate pass on which credit was taken was issued

in pursuance of the Circular of the Board. That being the case, the Tribunal observed that this copy cannot be considered to be a gate pass 'duly certified' by Range Suptd. as provided in Circular.

Therefore, it held that Credit could not have been taken on the basis of this gate pass.

10. In the case of Netplast Ltd. (supra), it has been held that MODVAT Credit taken on the basis of photocopy of gate pass after the amendment of Rule 57G(4) of the Central Excise Rules, 1944 with effect from 1.1.1990 providing for taking of credit on the basis of 'original' copy. The Tribunal has distinguished the judgment rendered in the case of SBS Organics Pvt. Ltd. as . The WRB held that MODVAT Credit is admissible when the goods in the factory packed condition are received by parties intending to avail such credit and that endorsement to any number is permissible. However, the department was allowed to make inquiry about the genuine nature of gate passes and about non-utilisation of gate passes of earlier stages of endorsement for availament of credit in terms of Trade Notice No. 86/89 dt. 12.5.1989.

11. In the case of Trishul Alloys Pvt. Ltd. {supra), the East Regional Bench held that on the plain reading of Sub-rule 2(A) of Rule 57G it is not stated that a manufacturer can take credit only with the permission of the Assistant Collector or that it has to be a prior satisfaction of the Assistant Collector. The Assistant Collector satisfies himself after making enquiry on the applicant taking the credit. That enquiry can be made as instructed by the Board from the originating Range Suptd/Assistant Collector. Only when he is not satisfied on the basis of that enquiry, the Assistant Collector has the authority to disallow the MODVAT Credit and not otherwise. Mere argument of the Assistant Collector in the present Order-in-Original that he is not convinced by the statement of the appellant that the original copy of the invoice had been lost, he is refusing to get convinced without making any enquiry which is not proper on the part of any quasi-judicial authority. Therefore, the Tribunal remanded the matter to the original authority to make an enquiry from the originating Range Suptd. about the duty paying character of the consignment and then decide the case de novo.

12. In the case of Power Built Ltd. (supra), the WRB noted that the MODVAT Credit was rejected only on the ground that the discretionary powers were vested in the officer only at a subsequent stage but this does not appear to be justified. It also held that investiture of powers is an administrative act and have to be exercised in adjudicating the cases which come up before them, irrespective of whether the cause of action for the same has arisen at an earlier date.

The Tribunal held that the bar of retrospective operation is applicable only when there is a statutory alteration in substantive law. This is not the case here. Therefore, the Tribunal on that finding remanded the matter for de novo consideration to re-examine the entire aspect of the matter, with regard to allowing or otherwise of the MODVAT Credit on the document other than the specified Documents, when the required document is reported to be missing.

13. In the case of Raymond Ltd. v. Commissioner of Central Excise, as reported in 1997 (93) ELT 489, it was held that the MODVAT Credit taken on duplicate invoices in view of the original having been misplaced was remanded for de novo consideration.

14. On consideration of these judgments, it is noticed that the Tribunal has been remanding the cases for de novo consideration to the Assistant Commissioner for verifying the endorsed duplicate gate passes issued when original gate passes were found to be lost. In the present case, both the authorities have merely rejected the claim by relying on the Circular without considering on all aspects of the matter. In view of the Tribunal's consistently remanding the case to the original authorities for verification, the course left open in this appeal is to follow these judgments by setting aside the impugned order and remanding the matter to the original authority to re-adjudicate the case in the light of the judgments noted above.