

Ceat Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-23-1998

Reported in : (1998)(102)ELT141TriDel

Appellant : Ceat Limited

Respondent : Commissioner of Central Excise

Judgement :

1. The stay application was heard for some time and thereafter the Bench felt in view of the directions given by the Bench by its Misc.

Order No. M/192/97-NB, dated 3-10-1997 and detailed note order dated 9-1-1998, the stay application would be allowed by dispensing with the pre-deposit and the appeal itself to be taken up for disposal, as the matter lies in a short compass.

2. By Show cause notice dated 5-1-1995, the appellants were called upon to explain as to why Modvat credit of Rs. 3,55,02,000/- should not be disallowed and recovered from them under Rule 57-I, of C.E. Rules, 1944. The reasons given are that during the scrutiny of the records of the appellants for the months of July, 1994 to Oct., 1994 it revealed that they had availed and utilised the Modvat credit wrongly on input 'Caprolactum' to the extent of the amount already indicated on the basis of invoices issued by Marketing Division of Gujarat State Fertilizers Company Limited, Laxmi Ganj Mandi, Gwalior (depot of the supplier) and Depot of M/s. Fertilizers and Chemicals Travancore Limited; who are not registered with the Central Excise Department. It was also alleged in the show cause notice that the

documents listed at S. No. 1 to 320 (Total 320) in Annexure-A of the show cause notice are inputs on which credit taken by the Noticees did not appear to be valid documents for availment of Modvat credit under Rule 57G of C.E. Rules, 1944, as these invoices are issued by the Depots of Gujarat State Fertilizers Limited and Fertilizers and Chemicals Travancore Limited, who are not registered with the Central Excise Department as required in terms of Notification No. 33/94-C.E. (N.T.), dated 4-7-1994 (inserting Rule 57GG in Central Excise Rules, 1944). It was also alleged that these invoices are also not containing the details as required under the Notification No. 32/94-CE. (N.T.), dated 4-7-1994.

3. The appellants resisted the claim and they have stated in a great detail as to how their claim cannot be denied. They had stated that both the suppliers of inputs namely GSFC and FACT had got themselves registered with the Department under Rule 57GG prior to 31-12-1994 as per Notification No. 64/94, dated 7-11-1994 and hence the Modvat credit should be regularized in terms of Notification No. 64/94. In this regard, they relied on the Tribunal's judgment rendered in the case of EMC Steels Ltd. v. CCE as reported in 1993 (44) ECR 215 which held that Rule 57H does not stipulate any condition of taking prior permission in one way and there is no dispute regarding duty paying character of such input. The Commissioner after hearing did not accept their plea and has conferred the duty and has also imposed the penalty of Rs. 35 lakhs.

4. When the matter came up for hearing on stay application after due consideration a Misc. Order was passed in Misc. Order No. M/192/97-NB, dated 3-10-1997 by which the Revenue was directed to verify the documents filed before the Tribunal and got a report from the concerned Commissioner. By the note order dated 9-1-1998, it was again directed that additional particulars furnished by the party should be perused and detailed report be filed.

5. The learned Advocate, at the outset, mentioned that they had furnished all the details. He filed copies of the letter dated 4-2-1998 and 15-2-1998 by which it was pointed out that in terms of directions by the CEGAT their documents were scrutinised by the Inspector on 2-2-1998 and the following aspects have been established :- 1. The 57G excise invoices issued by FACT, Gwalior Depot in the

name of CEAT, Gwalior, contained the reference numbers of 52A excise invoices the date thereof, etc. under which the goods were received by FACT, Gwalior Depot.

2. The 52A excise invoices were issued by FACT, Cochin Factory giving the details of quantity of Caprolactum, the value thereof, and the amount of excise duty, etc. which was despatched to their Gwalior Depot and on the basis of which the Gwalior Depot issued corresponding 57G excise invoices in favour of CEAT, Gwalior.

3. The goods supplied by FACT, Gwalior Depot to CEAT under 57G invoices were all excise duty paid goods received under valid 52A excise invoices by FACT, Gwalior Depot.

4. The goods in question, viz., caprolactum, was received by CEAT's Gwalior Plant along with 57G excise invoices giving all the particulars, including the reference of 52A excise invoices, date, value of material, and the excise duty, etc.

6. The learned Counsel submits that there is no dispute pertaining to grant of Modvat credit to the period earlier to July, 1994 and subsequent to Oct., 1994. The dealers have been registered in Oct., 1994 and therefore, the issue lies in the short compass inasmuch as that the details in the invoices are required to be scrutinised and all the details if found correct and in accordance with law then the Modvat credit cannot be denied. He submits that the input has been duty paid and there is no dispute with regard to duty paying nature of the inputs and about the availability of Modvat credit on the said input.

7. The learned DR has resisted the arguments as well as the alleged verification done by the department. He has also filed a detailed written submission in which it has been stated that furnishing the details in invoices are mandatory requirements and non-mentioning of the same will disentitle the appellants from grant of Modvat credit.

8. We have considered the submissions. We notice that there is no dispute at this stage with regard to the Caprolactum being an input for the final product and the

same being declared as the input for grant of Modvat. The issue lies in the short compass as to whether Modvat credit can be extend on the basis of the invoices furnished. It is stated by the Counsel that the date of registration had been extended to 31st December, 1994 and the dealers have got themselves registered in Oct., and therefore, the initial objection raised by the department has been met. The other aspects pertaining to the verification of the inputs had not been carried out and according to the Counsel there is no such glaring mistakes in the invoices and all the details required as per law are found in the invoices. The directions had been given to the Commissioner for carrying out such verification. It is stated in the letter dated 4-2-1998 and 15-2-1998 that such verification has been done in terms of the Tribunal's direction. In view of this, the Bench feels that the matter can be remanded to the Commissioner for granting hearing to the appellants and after due verification a detailed order can be passed in terms of their objections and the verification it is said to have been carried out. Thus, the appeal is allowed by remand; by setting aside the impugned order.

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