Collector of Central Excise Vs. Unichem Trading Co. (Pvt.) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-13-1998

Reported in : (1998)LC124Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Unichem Trading Co. (Pvt.) Ltd.

Judgement :

1. M/s. Hindustan Petroleum Corporation Ltd. (HPCL), Jodhpur are a registered dealer to receive furnace oil. They received the same under the cover of original invoices dated 17-8-1994 and 30-1-1995 without having the duplicate copy of the said invoices which were the valid documents for availment of Modvat credit. The above said registered dealer further supplied this furnace oil to the respondent herein under the cover of invoices issued under Rule 57GG on the basis of original invoices as referred to above. The respondent availed Modvat credit on the basis of duplicate copy of the invoices issued by the dealer. A show cause notice was issued to the respondent as well as to the dealer (HPCL) for showing cause as to why Modvat credit of Rs. 3628.22 may not be recovered being availed wrongly under improper document and why penalty should not be imposed.

2. The Assistant Commissioner, however dropped the demand but imposed penalty of Rs. 1,000/- on HPCL:, Jodhpur.

3. The department filed an appeal against the above order before the Commissioner (Appeals) but did not succeed. Hence this appeal of revenue before

the Tribunal.

4. Learned JDR Shri D.K. Nayyar submits that the lower authorities have committed an error in not demanding the Modvat credit inasmuch as the dealer HPCL took the Modvat credit wrongly on the basis of original invoice; the credit should have been taken on the duplicate invoice.

Since there has been an initial error on the part of the HPCL, he could not pass on better title of Modvat credit to the respondent herein. No other allegation has been made in this case regarding the non-duty-paid character of the goods. Emphasis of the learned JDR is that a certain procedure has been prescribed and that procedure is required to be followed in allowing the Modvat credit. It has been taken initially by the HPCL on a wrong document; the goods could not be entitled to Modvat credit even in the hands of respondent. For this preposition learned JDR, relies on a single Member's judgment in the case of HCL Office Automation Limited v. CCE, New Delhi reported in 1997 (95) E.L.T. 667.

He therefore prays for not only admitting the appeal but also allowing the appeal.

5. Learned JDR at this stage also draws support for the aforesaid submission from Rule 57E.6. I have carefully considered the submission of the learned JDR. I observe that no allegation has been made in the present case that the goods which were sent on a Modvatable invoice from HPCL to the respondent herein are not duty paid. There is only a procedural lapse at the most on the part of the HPCL for having taken the Modvat credit on the strength of an original invoice without having the duplicate copy of the said invoice. The Revenue has not made any investigation as to what happened to the duplicate copy of the invoice. No statement has been recorded from representative of HPCL whether the duplicate copy was received by them or it was lost in transit or whether it has been misused. In the absence of any further investigation on the part of the Revenue and on the allegation made in the case, settled proposition of law that a procedural deviation should not result in denial of benefit of substantive character which is the Modvat credit in this case.

Therefore to urge that M/s. HPCL has not taken the credit correctly because of absence of duplicate copy of the invoice without any further evidence on record and therefore no credit should be allowed on such goods is to deny the substantive benefit for a procedural lapse. The theory of better title would not come to the aid of revenue in the present case because it has not been established that goods are non duty paid. It has remained a procedural lapse, as stated above, on the part of the HPCL. For this purpose the lower authorities have already imposed a penalty of Rs. 1000/- on HPCL. In any case there is no fault of respondent herein. Modvat credit has been taken by the respondent on the basis of the correct copy of the invoice issued by the HPCL.

7. Reliance placed by the learned JDR on the judgment in the case of HCL Office Automation Ltd. (supra) is not correct in the facts and circumstances of this case. That was a case of Modvatable assessee receiving the goods under a wrong invoice. The present case is of the type where the respondent herein has obtained the goods under a correct copy of the invoice.

8. In view of the aforesaid discussion, after admitting the appeal of the Revenue, I dismiss the same.