

Arti Steels Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-10-1998

Reported in : (1999)(107)ELT166TriDel

Appellant : Arti Steels Ltd.

Respondent : Collector of Central Excise

Judgement :

1. By show cause notice dated 5-12-1986 read with corrigendum dated 20-1-1993 the present Appellants were asked to show cause to the Collector as to why an amount of Rs: 38,79,137.90 taken by them as deemed Modvat credit should not be disallowed and penalty imposed. The matter was thereafter adjudicated by the Collector who by the impugned order-in-original, dated 21-4-1995 confirmed the demand for the said amount and imposed a penalty of Rs. 9,50,000/-. The appellants in the present appeal have prayed for the setting aside of the said order.

2. Facts briefly are: The appellants at the relevant time were engaged in the manufacture of iron and steel products falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. They were also availing the facility of Modvat credit in respect of duty paid on the inputs used in or in relation to the manufacture of their final products. During the period June, 1986 to August, 1986, the appellants took deemed credit on waste and scrap of iron and steel to the tune of Rs. 38,79,137.90. The Department alleged that the said credit was inadmissible on the ground that appellants had not produced any documents evidencing payment

of duty and also for the reason that the inputs were clearly recognisable as being non-duty paid or charged to Nil rate of duty. Show Cause Notice referred to the letter dated 3-9-1986 issued by the Range Supdt. to the appellants advising them not to take and utilise the Modvat credit on waste and scrap as the facility of Modvat credit on deemed basis had been withdrawn. It was further alleged that the appellants had refused to pay heed to the advice of the Range Supdt.

3. Ld. Collector identified the question for determination as whether the appellants were entitled to deemed credit without production of duty paying documents. He observed that at the relevant time waste and scrap of iron and steel was exempt from the whole of the duty of excise as per Notification No. 208/83-C.E., dated 1-8-1983 as amended by Notification No. 54/86-C.E., dated 10-2-1986. Ld. Collector further observed that if certain goods are exempt from the whole of the duty of excise, no duty is required to be paid on their clearance. The result was that such goods are clearly recognisable as being non-duty paid or charged to Nil rate of duty. Ld. Collector rejected the argument of the Counsel for the assessee that there was a difference between goods wholly exempt or charged to Nil rate of duty and non-duty paid goods.

Ld. Collector had argued that whereas 'chargeable to Nil rate of duty' meant that the goods attracted a Nil Tariff rate, 'non-duty paid goods' meant that they were such goods on which duty was no doubt required to be paid but, in fact, duty had not been paid. Ld. Collector held that even if the goods had become wholly exempt from duty by notification, the ultimate effect would be the same, viz., they are chargeable to Nil rate of duty. The Collector observed that the concept of deemed credit had been clearly brought out in the second proviso to Rule 57G(2) in as much as it was to allow deemed Modvat credit without production of documents evidencing payment of duty only when the duty is leviable on such inputs. It was another matter that the buyers of inputs might not be able to produce the duty paying documents. Further, the words "having regard to the period that has elapsed since the duty of excise was imposed on any inputs" appearing in the second proviso to Rule 57G(2) were suggestive of the fact that they refer to the duty-paid material being available in the market after a period computable from the date of imposition of duty. Ld. Collector also observed that the directions under the

second proviso to Rule 57G(2) have been issued not to allow the credit where the duty is not payable on the inputs but to facilitate the buyer of the inputs to avail the credit where otherwise the duty is payable but the buyer is not able to get the duty paying documents. The above intent of the Legislature was borne out by the amending order dated 29-8-1985 withdrawing the deemed credit facility in respect of waste and scrap of iron and steel. Id. Collector also observed that the claim of the assessee that the inputs were purchased from traders and not from manufacturers did not make any difference because of the availability of exemption to the items in question.

Since the inputs in question were wholly exempt from the duty of excise, Id. Collector held that they were clearly recognisable as being non-duty paid or charged to Nil rate of duty and therefore, the directions dated 7-4-1986 issued under the second proviso to Rule 57G(2) did not apply to the inputs in question, since they were wholly exempt from the payment of Central Excise Duty.

4. Shri Harbans Singh, Id. Advocate who argued the case before us for the appellants contended that in terms of the second proviso to Rule 57G(2) the Central Government was empowered to direct certain inputs as are clearly recognisable as non-duty paid to be deemed to be duty paid and credit of duty in respect of the said inputs may be allowed without production of documents evidencing payment of duty. After considering the representations from various quarters explaining their difficulties in availing credit on iron and steel articles due to their inability to produce duty paying documents in respect of their inputs, the Central Govt. had issued a direction under the second proviso to Rule 57G(2) on 7-4-1986 allowing deemed credit on finished products falling under Chapter 72 if the inputs were covered under a specified heading under column 2 of the Table to the direction. Items under Chapter Heading 7203 (sic) had thus become specified inputs for purpose of grant of deemed credit. He underlined the fact that the facility of deemed credit was granted by Govt. with a view to relieving the assesseees of the difficulty in producing duty paying documents. The assesseees were, therefore, relieved of the burden of producing proof of payment of duty on certain specified inputs. Further, various judicial pronouncements had held that goods purchased from open market would be presumed to be duty-paid. Various orders of the

Courts and the Tribunal had also held that the burden of proving that a certain item was non-duty paid was on the Department. Further, since there was no bar to utilisation of the credit before 29-8-1986, the appellants were in any case entitled to utilise credit earned by them till 29-8-1986. Ld. Counsel also submitted that the appellants had taken credit after proper declaration and after filing R.T. 12 returns regularly for the months of June to Sept., 1986. Ld. Counsel submitted that there was a series of decisions of the Hon'ble Supreme Court and the Tribunal holding that goods purchased from open market are duty paid unless it is established by the Department that the goods were obtained from the manufacturer after availing full exemption. In the instant case the appellants had produced invoices to show that the inputs were purchased from the market. The Collector had rejected the appellants' claim without relying on any document to show that the inputs in question were received from manufacturers. Ld. Counsel also drew attention to the fact that the Collector had failed to consider the implications of Notification 208/83-C.E. as amended by Notification 54/86-C.E. which granted exemption to waste and scrap subject to certain conditions. In support of his contentions, Ld. Counsel relied on the following case law: *Nahar International v. CCE* [F.O.No. 628/97, dated 26-5-1997]; and *Mahavir Spinning Mills v. CCE* 5. Defending the impugned order, Shri R.K. Jain, Ld. SDR drew attention to the following case law in support of the findings of the Collector :- *Man Industries Corpn. Ltd. v. CCE* 1996 (88) E.L.T. 178 (Tribunal); *Jagat Steels Pvt. Ltd. v. CCE* 1996 (88) E.L.T. 776 (Tribunal); and *Maharashtra Steel Industries v. CCE* 1997 (95) E.L.T. 503 (Tribunal).

He also drew attention to the fact that the invoices did not clearly indicate the nature of the goods.

6. We have given careful consideration to the rival contentions. In *Machine Builder's* case the Larger Bench had clearly held that the words "inputs are clearly recognisable as being not duty paid" in the various Government of India orders would comprehend all inputs on which it is patent that duty has actually not been paid for any reason, i.e. the rate of duty is stated to be nil rate as per Schedule to the Tariff Act or where the inputs are wholly exempt from duty or for any other reason. Further, the words "charged to nil rate of duty" must be understood not in the narrow sense of nil rate of duty being stated for the inputs in the Schedule to

the Tariff Act but in the general sense that actually no duty has been demanded or paid. Cases of inputs wholly exempted from duty would also be attracted. The words "wholly exempt from duty" would include cases of unconditional exemption of the whole of the duty payable and also conditional exemption of such duty where the conditions are shown to have been satisfied. Following the decision of the Larger Bench in Machine Builder's case the Tribunal had in Nahar International Ltd., supra, held that deemed Modvat credit would be allowable to iron and steel scrap procured from the market in terms of Notification No. 54/86. Likewise, in Mahavir Spg. Mill's case, supra, also the Tribunal had held that deemed credit was allowable for scrap purchased from the open market from Kabbadies in terms of Notification No. 54/86. The Tribunal observed that the exemption granted under Notification No. 54/86 was a conditional one and the onus was on the Department to prove that the goods were non-duty paid. Since the Department had not brought any evidence on record to prove that the goods were non-duty paid, deemed Modvat credit cannot be denied. The Id. DR on the other hand placed reliance on the Tribunal decision in Man Industries Corporation, supra, which had held that scrap like discarded articles of steel, broken parts of machinery and cycle, etc.

purchased from open market were clearly non-duty paid goods, therefore, no Modvat credit was allowable. Further, in Jagat Steels Pvt. Ltd., supra, also deemed Modvat credit was denied to iron and steel scrap obtained from open market after November, 1986 since they were clearly recognisable as non-duty paid. In the case of Maharashtra Steel Industries v. CCE, supra, scrap generated from ship breaking was held to be not clearly recognisable as duty paid since under Notification No. 208/83 it was provided that for being eligible for the benefit of the said notification the products should have been manufactured from inputs which had already paid Central Excise duty. Since ship breaking scrap arose out of ships imported, it could not be said that the scrap generated from the ship was lying in the country. In the facts of the present case it is not in dispute that waste and scrap of iron and steel was exempted from the whole of duty of excise as per Notification No. 208/83 as amended by Notification No. 54/86. In terms of the Larger Bench decision in Machine Builder's case, supra, the words "inputs are clearly recognizable as being not duty paid" in the various Government of India orders would comprehend all inputs on which it is patent that duty has actually not

been paid for any reason such as the rate of duty is stated to be nil as per Schedule to the Tariff Act or where the inputs are wholly exempted from duty and also where the exemption is conditional, the conditions should be shown to have been satisfied. In the instant case waste and scrap of iron was admittedly exempted from the whole of the duty of excise as per Notification No. 208/83, as amended. However, we also note that Notification No. 54/86-C.E. was a conditional Notification. We observe that the Department has not produced any evidence to establish that the inputs in question are clearly recognisable as non-duty paid. In Final Order No. A/834/97-NB in *Mahavir Spinning Mills v. CCE* and in Final Order No. 628/97-NB, dated 26-5-1997 in *Nahar International v. CCE*, Chandigarh the Tribunal had held in favour of the assessee on the ground that the Department had not discharged the onus of proving that the goods have not paid duty. In the present case also, we find that the Department has failed to bring out any evidence to show that the waste and scrap in question are clearly recognisable as non-duty paid. Following the ratio of the said two decisions relied upon by the appellants we accept the submissions made on behalf of the appellants.

7. This Appeal is accordingly allowed with consequential benefits to the appellants.

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