

Prestcon Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-07-1998

Reported in : (1999)(112)ELT888Tri(Mum.)bai

Appellant : Prestcon

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant manufactured prestressed concrete poles from out of raw material supplied by the Gujarat Electricity Board (GEB for short) to which it sold the goods. It took Modvat credit of the duty paid on cement and steel in the manufacture of these poles. Notice was issued proposing to demand the credit on two grounds -firstly that the manufacturer of the goods is not the appellant but GEB and secondly that the gate passes evidencing payment of duty have been issued to GEB and not to the appellant. The Assistant Collector [whose order has been confirmed by the Collector (Appeals)] found against the appellant.

Hence this appeal.

2. The contention of the representative of the appellant that it is now settled that in a situation of this kind it is the person who transferred the raw material to the products and not the supplier of the raw material has to be accepted. The appellant being the manufacturer, who cleared the goods on payment of duty, was entitled to take credit of the duty paid on the inputs.

3. It is contended that the gate passes in which GEB was shown as consignee were endorsed to the appellant in terms of Board's instruction. On going through copies of two gate passes it is found that in some cases gate passes have been endorsed to M/s. Prestcon, i.e. the appellant. Such documents are valid for taking credit. In some other cases the gate passes were endorsed by the GEB not to M/s.

Prestcon but to Bhaikaka Trust. In the absence of substantiation I am not able to accept the contention of that Bhaikaka Trust which began and operated M/s. Prestcon located at Shapur and that M/s. Bhaikaka Trust has no other factory anywhere else. In addition, the instructions of the Board permitted endorsement of the gate pass by the consignee to the manufacturer and not to a statutory body or organization which may have consoling interest in a factory. For these separate, for closely inter-connected reasons, the gate passes endorsed to the Trust could not be duty paying documents for the appellant. The matter was adjourned to today to enable the representative of the appellant to work out figures of duty which would and do not be available as credit on this basis. He has however not appeared today.

4. Penalty was imposed on the ground that the appellant took credit in defiance of the orders of the Assistant Collector to the contrary. In the possession of law as indicated above, the orders of the Assistant Collector issued on the ground that the appellant was not the manufacturer, were clearly illegal. Penalty imposed is set aside.

5. In these circumstances, I allow the appeal to the extent that the credit would be available on the gate passes which were endorsed to M/s. Prestcon. The Assistant Commissioner shall now work out the duty payable and communicate to the appellant for recovery.

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