

Collector of Central Excise Vs. Wire and Fabrics Sa Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-23-1998

Reported in : (1999)LC132Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Wire and Fabrics Sa Ltd.

Judgement :

1.2 The respondents herein took Modvat credit of duty paid on import of goods imported through post parcels through Foreign Post Office.

Certificate from an Appraiser in Foreign Post Office was prescribed as a document for availing Modvat credit in terms of Rule 57G by the Central Government by a Notification w.e.f. 19-1-1995. The certificates produced in the present case are of October and November 1994. On this basis the original authority denied the Modvat credit.

1.3 On appeal, the respondents herein succeeded. Finding of the lower appellate authority is as follows :- "I have considered the facts and submissions made, in all the appeal. It is a fact that provisions of Rule 57G of the Central Excise Rules, 1944 at the relevant time did not specify any documents as valid document for availing Modvat credit on inputs imported through F.P.O. It was only on 19-1-1995 that an amendment was made in the said Rules so as to include the certificates issued by the Appraisers of F.P.O. as valid document for Modvat purposes. I also observe that the lower authority has not disputed about the receipts of the inputs

and their being used for the manufacture of duty paid final product. In the absence of any valid prescribed document, the certificates issued by the Appraisers of F.P.O. could be considered as the only legal documents illustrating duty paid nature of the inputs. Assuming that the said certificate was not a document prescribed under Rule 57G, then it would necessarily mean that benefit prescribed under the law was inadmissible just because there was a lacuna in the law. Such an absurd situation cannot be allowed to prevail. Interpretation of Rules or law should not be made in such a way that it leads to absurdity. The lacuna of not having prescribed any document was realised and the mistake was subsequently rectified by making a specific provision to that effect in Rule 57G(3)(d) and an amendment notification has been issued though not effective retrospectively.

1. therefore, find considerable force in the appellants' plea and set aside the impugned orders of the lower authority and allow the appeal." 2. Learned JDR, Shri T.A. Arunachalam reiterating the grounds set forth in the memo of appeal filed by the Revenue submits that an adjudicating authority cannot fill any lacuna in law. If no document was prescribed for giving Modvat credit in respect of imports through post parcel, no Modvat credit itself could be allowed. He, therefore, submits that the impugned order is not correct and should be set aside.

3. Opposing the contentions, learned Advocate Shri K.K. Anand while reiterating the findings of the lower appellate authority further submits that this is not a case of lacuna in law but one of omission.

Pointing to the history that a certificate from an Appraiser from Foreign Post Office was prescribed as a valid document for taking Modvat credit as early as 1st July, 1989, as is indicated from Bombay-I Trade Notice No. 57/1989, dated 22-6-1989 titled as "Procedure for Modvat credit on goods imported through Post Parcel" at para 11.137 in CEN-CUS Publication Guide to Modvat 1992-93 at page 1/173. He also submits that reference to the Board's letter prescribing the said certificate as a valid duty paying document for taking Modvat credit effective from 1st July 1989 is also available in Central Government Notification No. 16/94-C.E. (N.T.), dated 30-3-1994 (refer S. No. 11 of the Table).

4. He further submits that for the transitory period an amendment was itself made under Rule 57H allowing any document for the purpose of taking Modvat credit. He, therefore, submits that it is not correct to say that the certificate issued by an Appraiser in the Foreign Post Office was not a prescribed document. In any case he further submits that the Notification No. 2/95 dated 19-1-1995 revalidates that thing retrospectively.

5. I have carefully considered the pleas advanced from both sides. From a reading of the Rule 57A, it is obvious that goods whether imported or indigenously manufactured on which countervailing duty or Central Excise duty has been paid is liable to be credited as Modvat credit; that being so, there is no reason as to why the goods imported through post parcels via the Foreign Post Office should not be allowed the Modvat credit as long as certificate of payment of duty from the competent authority is available. Even if Notification No. 16/94-C.E., dated 30-3-1994 is read as being applicable only upto 30-6-1994, I am of the view that it is not a case where Modvat credit should be denied but it would be proper having regard to the aforesaid history that the Notification No. 2/95 dated 19-1-1995 should be given retrospective effect. The power which was earlier exercisable by the Board prescribing a document under Rule 57G was given to Central Government.

Therefore, a document prescribed by the Board continued to be a valid document for the purpose of taking Modvat credit unless it is specifically taken away by the Central Government. There is no Notification brought to my notice where during the intervening period from 1-4-1994 to 18-1-1995 any specific Notification has been issued to deny the Modvat credit on a certificate issued by an Appraiser in a Foreign Post Office. In view of the foregoing discussion, I do not find any substance in Revenue's appeal.

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