Quest International India Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/14978

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-08-1999

Reported in : (1999)(82)LC555Tri(Mum.)bai

Judge : S T Gowri, J S Murthy

Appellant : Quest International India

Respondent : Cce

Judgement :

1. These 20 appeals are against the common order of the Commissioner (Appeals) denying modvat credit taken by the assessee the appellant on various grounds.

3. In ten notices, the ground for denying it was that the invoices which were issued by the appellant for movement of goods from its godown to its factory were lacking prescribed details under Notification 32/94, 33/94. Notification 32/94 prescribes the category of persons who could issue invoices under Notification 33/94. By Notification 33/94 the Central Excise rules were amended to incorporate Rule 57GG about invoke number. This rule does not prescribe the details of the invoices but provides in Sub-rule (4) for such details to be prescribed by the Board or the Commissioner. Apart from this inaccuracy, none of the notices indicate what particulars, which were lacking in the invoices in question. A reading of copies of couple of such invoices No. 474 dt. 29.8.1994, No. 475 dt. 30.8.1994 does not show absence of any particulars. We were assured by the advocate of the

appellants that these particulars are found to be in each of the invoice. The Departmental Representative argument's that a person cannot issue an invoice to himself is ingineous (sic) but not relevant, in view of total absence if any such allegation in the notice itself.

Neither the Assistant Commissioner, nor the Commissioner (Appeals) who go into this aspect at all. Commissioner (Appeals) order is also entirely silent on the credit of the particulars lacking in the invoices. Denial sketch of credit cannot be sustained.

4. The credit has been denied on the ground that on the allegation in 4 notices that invoices did not bear printed serial number as prescribed but hand written number on them. Advocate for the appellant relies upon decision of the Tribunal on Nahar Spinning Mills Ltd. v. Commissioner of Central Excise to say that this is not a ground to deny the credit and undertakes to produce evidence before the Assistant Commissioner within two months from the receipt of this order that invoices were based on duty paying documents and that the goods were actually received and taken by use and no other invoices of the same number has been issued. In so far as these four notices are concerned, therefore, the appeals are allowed and the impugned order set aside, subject to the matter being determined afresh by the Assistant Commissioner according to law in the light of justice.

5. One of the notice proposed recovery of credit taken an invoice dt.

2.5.1994 based on a gate pass which was issued by the manufacturer on 29.12.1993 on the ground that the credit was taken on 13.6.1994. No specific ground is forthcoming on the notice or the orders for denying the credit. The credit taken appears to be in order in view of Notification. This notification 21/94 permitted credit to be taken on such invoices upto 30.12.1994 on goods is stock on 31.3.1994 incorrected taken. Two notices proposed denial of credit on account of one gate pass each, issued in February and March 1994 on which credit was taken in July 1994 and August 1994. Contravention of provisions of notification No. 16/94 which limiting credit to be taken on gate passes issued prior 1.4.1994 up to 30.6.1994 is alleged. Strictly speaking going by the words of the rules there is contravention, as the Departmental Representative contends. However, the

Tribunal had taken, 1 different view in Kerala State Electric Development Corporation v.Collector of Central Excise. An excerpt from this decision has been reproduced in Tribunal's decision in Commissioner of Central Excise v.Travancore Chemicals and Mfg. Co. Ltd. 1997 (71) ECR 384. The extract shows that the Tribunal held that credit could be allowed in such cases because the gate passes when they were issued were issued according to law and thereafter for some delay in liaison credit could not be denied on the goods covered by such gate passes. The Judgment of the Supreme Court in STO v. K.I. Ibrahim (no citation) was also relied upon in support of.

6. Denial of credit taken on original copy of the dealers invoice in July 1994 cannot be supported in view of the Trade Notice No. 57/94 dt.

16.9.1994. Similarly denial of cred on the ground that the dealer does not have a godown cannot be supported in the light of that Trade Notice. It was only that from 15.3.1995 that possession of facilities for access to storage was mandatory to dealers.

7. The credit therefore was admissible, except in the case of the invoice containing particulars serial number referred to in para 4 on which he has already passed order. Except to the extent, the appeal is allowed. Penalty is set aside. Consequential relief, if any.