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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-10-1999

Reported in : (1999)(108)ELT275TriDel

Appellant : Sunrise Polycon

Respondent : Commissioner of Central Excise

Judgement :

1. This is an appeal filed against the order-in-appeal dated 21-3-1997 passed by the Commissioner (Appeals), Allahabad.

2. Ld. Counsel stated that the appellants are manufacturers of excisable goods under Chapter 39. During the year 1994 the unit was registered under Rule 174 and also opted to avail the Modvat concession w.r.t. Rule 57A r/w 57G and filed a declaration on 25-11-1994. On 10-1-1995 the appellants filed a revised declaration in which the inputs were reduced from 12 to 8. After submitting the declaration on 25-11-1994 to the A.C., Varanasi, the appellants entered the inputs received in the factory in RG 23A Part I on the date of receipt of inputs. But credited the duty thereof only on and after 15-1-1995 in RG 23A Part II. The credits were taken on the dates of utilisation of the inputs and thus the inputs were lying in the factory till the date of filing of second declaration on 10-1-1995. The RG 23A Part I of December 1994 was submitted to the Range Superintendent on 5-1-1995 which clearly shows the position of inputs lying in stock at the end of the month December 1994. The inputs which are included in second declaration of 10-1-1995 are also in the 1st declaration dated 25-11-1994 and the credits taken thereon are

the subject matter of the impugned order in appeal.

3. The Superintendent of Central Excise having jurisdiction over the factory was duly apprised with the above facts and photostat copy of above declaration with token of receipt thereon was also made available to him. A letter dated 3-7-1995 was also sent to him explaining the above position. However, a demand-cum-show cause notice dated 17-7-1995 was issued in which the credit taken under Rule 57A on the inputs received upto 11-1-1995 was alleged as inadmissible because no acknowledgement has been received from the office upto 11-1-1995 and the Invoice No. MSP/VIN/103, dated 8-12-1994 received from Madan Stores (P) Ltd., Chandpur, Varanasi involving Modvat credit of Rs. 46,993.84 is not a valid document because the word "Duplicate for Transporter" has been written by hand instead of Printing the same on the Invoice. A reply to the show cause notice was submitted. During the personal hearing on 18-9-1995 also the appellants produced the relevant records before the ld. A.C. However the A.C. confirmed the demand. Hon'ble Commissioner (Appeals) upheld the order.

4. Ld. Counsel further submitted that the ld. A.C. has travelled beyond the show cause notice in deciding the case and has grossly violated the principle of natural justice. He further submitted that the Commissioner has erred in acting contrary to the following judgments of Hon'ble Tribunal: The Central Board of Excise & Customs has clarified vide Circular No.219/53/96-CX, dated 4-6-1996 that Modvat credit should not be denied on account of wrong classification in declaration under Rule 57G. Thus, the order of the Assistant Commissioner is contrary to the circular of C.B.E.C.5. He further submitted that nowhere (in the show cause notice, in adjudication order or in order-in-appeal) the authenticity of Invoice No. MSP/VIN/103, dated 8-12-1994 or being duplicate copy has been challenged. In other words, it is admitted fact that invoice on which credit was taken is duplicate copy for transporter. The credit has been taken on duplicate copy Invoice, it is undisputed. The receipt of goods of invoice is also undisputed along with its use in excisable final product and similarly the amount of duty paid inputs which has been claimed as credit is also undisputed. Thus, all the requirements of Rule 57A r/w 57G are fulfilled. There are only procedural mistakes in maintenance of invoice by consignor and it is against the law of natural justice to punish the appellant for

the mistake of others (consignor) which was beyond the control of the appellant.

6. Ld. DR reiterated the department's submissions and stated that the appellants have not challenged the findings of the adjudicating authority that the declaration dated 25-11-1994 filed by them under Rule 57G was incomplete. This is further confirmed by the fact that they filed a revised declaration under Rule 57G on 11-1-1995 even though no letter was issued to them by the department in this regard.

This leads to conclusion that the appellants were fully aware that the declaration dated 25-11-1994 was not proper and complete. It is the duty of the appellants to file a proper and complete declaration under Rule 57G in the prescribed proforma giving the full description and tariff classification of the inputs as well as the final product. Since the appellants failed to observe the statutory provision of filing proper declaration, the Mod-vat credit on the input taken before 11-1-1995 has been rightly disallowed.

Similarly, the credit on Invoice No. MS/VIN/103, dated 8-12-1994 has been rightly denied as pre-printing of "duplicate for transporter" on the invoice is a statutory requirement under Rule 57G.7. I have considered the above submissions. I observe that if the declaration filed by the appellant was incomplete in the opinion of the authorities they could have called for the remaining information required for taking decision and thereafter passed appropriate orders.

What is actually required to be seen in such cases is whether there was a substantive compliance with the essential requirements of law. In this case it is seen that the appellants had first filed a declaration on 25-11-1994 and subsequently a revised declaration on 10-1-1995 and the inputs were lying in the factory till the date of filing second declaration and RG 23 Part I was also submitted to the Range Superintendent on 5-1-1995.

8. The department has not been able to contradict the submissions made in this regard during hearing and it shows that the Superintendent of Central Excise had been kept duly appraised of the facts.

9. There is no dispute that the inputs in question were specified inputs received in the factory and utilised for the specified purposes.

Therefore minor procedural infractions were condonable and could not be made the basis of denial of Modvat credit in view of the substantive compliance with the essential provisions of law as held in a catena of orders of this Tribunal. The impugned orders are therefore set aside and the appeal allowed as already announced in the Open Court.