

Uttam Steels Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-11-1999

Reported in : (1999)(65)ECC225

Appellant : Uttam Steels Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The case was posted for hearing of the stay application but was taken up for final disposal with consent of both sides.

2. In a visit to the appellant's factory the officers noted excesses and shortages in the stock of finished products as well as raw materials. They also found certain instances where Modvat credit was wrongly availed on certain capital goods. A show-cause notice was issued dated 22-12-1997 seeking confiscation of excess goods and recovery of duty on the goods found short. Allegations as to denial of Modvat credit were made as also for imposition of penalty on the appellant under various rules. The Commissioner passed the impugned order dated 24-7-1998 against which the present appeal has been filed.

In the appeal memorandum, the contest made is on two points only. The first is the confirmation of demand to the extent of Rs. 3,17,200/- on the basis of shortages found in the final products described in Annexure B to the show-cause notice. The second point of contest is the penalty imposed on Rs. 3 lakhs under Rule 173Q.3. The case for the appellant was argued by Shri V.S. Nankani. Revenue was

represented by Shri Ashokan.

4. I have carefully considered the submissions made and have seen the concerned documents.

5. As regards the confirmation of demand, before the Commissioner the appellants had made the plea that the officers had witnessed shortages as well as excesses in the final goods and that these should be set off against each other. The Commissioner considered the submissions and held that since the excesses and shortages did not belong to the same category of the goods he contended that the request of appellant was not feasible. Beyond reiterating the plea made before the Commissioner no other argument have been advanced in this respect. I therefore uphold the impugned order as far as it relates to confirmation of demand of duty of Rs. 3,17,200/-.

6. Vide Annexure E to the show cause notice demand amounting to Rs. 2,79,25,905/- was raised on the ground of various lapses in taking actual goods Modvat credit. The first two instances related to credit taken on the basis of original invoices. The Commissioner examined the provisions of relevant rules. In para 12 of the impugned order, the Commissioner observed that since RT 12 at the material time had been finalised by the proper officer, the acceptance of the documents for availing of the credit was established. Thereafter he examined the issue on merits also. He observed that whereas there was no specific provisions in the rules relating to credit on capital goods as regards the copy of the eligible documents, the provisions of taking credit on inputs would apply to the provisions of capital goods. This discussion seems to be inconclusive. As regards the other grounds on which the demand was raised in respect of capital goods Modvat availment, his order is elaborate and results in dropping of the entire demand made in Annexure E and F to the proforma which includes the credit sought to be denied on account of use of wrong copy of the invoice. Reading para 12 of the discussion and para F of the order it becomes clear that in dropping the demand amounting to Rs. 2,94,000/- on the ground of use on wrong copy of invoice, the Commissioner had held that it did not sustain on grounds of limitation.

7. The penalty imposed upon the appellant's relates to this very aspect. In para H of his order, the Commissioner has held that the assessee attracted this penalty for taking credit on capital goods on the basis of original invoice without obtaining the permission of the Assistant Commissioner. Shri A. Ashokan supported the order in this respect stating that even if on the ground of limitation the demand does not sustain the assessee cannot be absolved of the contravention but would continue to be liable to penalty. Shri Nankani however relies upon the judgment of the Supreme Court in the case of CCE v. HMM Ltd., 1995 (76) E.L.T. 497 which lays down that where the demand is not sustained on the ground of limitation, penalty under Rule 173Q could not be imposed. Considering the ratio of the judgment I find that the Commissioner had erred in imposing the penalty and set aside the order as far as it relates to this penalty.

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