

Kanoria Steels Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-04-1999

Reported in : (1999)(85)LC143Tri(Mum.)bai

Judge : S T Gowri

Appellant : Kanoria Steels

Respondent : Cce

Judgement :

1. Appellant filed, in August, 1986, a declaration under Rule 57G indicating inter alia the inputs on which Modvat credit was proposed to be taken and proceeded to take credit on the duty paid on these goods.

The final product manufactured were ingots and billets and the inputs include Came set, refractory bricks and IB mix. By notice dated 4.12.1987 the department proposed recovery of the credit taken on these goods on the ground that they were used to line walls of the furnace and other such equipments in the appellant's factory and therefore were not inputs defined in Rule 57A. The Assistant Collector, by his order dated 15.4.1988 confirmed the demand. On appeal from this order, the Collector (Appeals) held that proceedings will be regulated by time limit specified in Section 11A of the Act, which according to him, would apply (since at the relevant time there was no time limit prescribed under Rule 57I). He said that by amendment made to Section 11A by the amending Act which came into effect on 27.12.1985, the Assistant Collector has no jurisdiction to adjudicate the case.

He therefore set aside the order giving him an opportunity to send the papers to the Collector for necessary action.

2. Subsequently another notice dated 5.4.1991 was issued proposing recovery of duty for the same period. This notice, which was issued under Rule 571 with sub-section (1) of Section 11A alleged suppression and/or mis-statement that the goods were inputs/used as inputs.

Adjudicating on this notice, the Additional Collector confirmed the demand. Hence this appeal.

3. One of the arguments raised before the Additional Collector was that the notice was barred by limitation. It has invoked the extended period, and there was no evidence of suppression or misdeclaration by the assessee. The Additional Collector in his order finds that the assessee had wilfully mis-stated the fact that the goods are "inputs that go into their final products". She also relies on the fact that the notice was issued on 14.12.1987 and hence recovery of credit from January 1987 to November, 1987 was not barred by limitation.

4. The appellant had declared the goods to be inputs. An input is an item used in or in relation to, the manufacture of the final product.

There is no requirement in the rules or any law laid down by any decision that any such inputs has necessarily to "go into" the final product presumably this means that this should form part of the final product. There are any number of inputs of which there can be no dispute that they do not form part of the finished products. The appellant had not also in Rule 57G declaration stated or suggested that these inputs form part of the finished products. The use of refractory bricks would have been known to the department. There was no indication as to the manner of use of the other two inputs; nothing however prevented the department from ascertaining it. I am therefore not able to find any mis-statement of facts.

5. The fact that notice was issued in December, 1987 for credit taken from November 1986 to November 1987 is not relevant for the present proceedings. These proceedings arise from the notice issued on 5.4.1991 which specifically

called on the appellant to show cause against recovery [of] credit taken from November, 1986 to November, 1987. The Additional Collector was adjudicating upon this notice and not on the earlier notice. As far as this notice is concerned, it had invoked the extended period for the entire period and the fact that another notice might have earlier been issued is no defence against the finding that the extended period was not invokable with regard to this notice. This notice is however barred by limitation and the order therefore cannot be sustained.

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