Commissioner of Central Excise Vs. Chemplast

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-02-1999

Reported in : (1999)(66)ECC364

Judge : A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Chemplast

Judgement :

1. This is a Reference application against this Tribunal Final Order No. 282/ 98 dated 10.2.98 by Revenu on the following question of law sought to be referred: Whether the Hon'ble CEGAT is correct in extending Modvat credit on inputs received under cover of invoice-cum-challans issued by M/s.

SAIL and such documents endorsed by the Original consignee as well as head office which are not valid and prescribed documents as per Rule 57G(3) of Central Excise Rules, 1944.

2. Heard Shri R. Victor Thiagaraj, Ld. SDR who submits that the case-law relied upon viz. Echo Cables (P) Ltd., relates to the period May and June 1988, by which time the documents issued by public sector undertakings were valid documents specified for taking Modvat credit.

With the invoices having come into operation with effect from 1.4.94, only those documents issued under Rules 52A/57G and 57GG read with Notn. Nos. 15/94

CE (NT); 33/94 CE (NT) and 64/ 94 CE (NT) are the valid and specified documents for taking Modvat credit. In the instant case the documents on which credit were taken are not in conformity with the provisions of the Rules ibid and Notifications.

3. Ld. SDR further submits that the CEGAT, order is against the ruling of Hon'ble CEGAT's earlier decisions in the case of M/s. Jai Bhavani Steel Industries Pvt. Ltd. wherein it was held 'the statute provides for certain documents as evidence of payment of duty which are required to cover the consignment for the purpose of taking Modvat credit...it does not follow that any document evidencing payment of duty could be accepted as valid documents for the purpose of taking Modvat credit.

4. Heard Ms. L. Mythili, Ld. Advocate for respondents who submitted that in the case of Ajit Cotton Ginning as in it had been held that an Invoice-cum-Challan of IOC was a valid document for Modvat credit. However, Ld. SDR countered that the period of dispute is not available in this decision.

5. Ld. Advocate further submitted that the Trade Notice No. 62/CE/95 dt. 28.11.95 as in 1996 (81) ELT 30 (Tri.) issued by C.C.E., Chandigarh support the Respondent. She also cited Spark Engineering as in but Ld. SDR countered that the matter was merely remanded in this case. Ld. Advocate then cited Amal Rasayan as in and submitted that technicalities could not be used to deny Modvat credit.

6.I have carefully considered the rival submissions and records of the case. In Jai Bhavani Steel Enterprises (supra) cited by Ld. SDR, the issue involved was of subsidiary gate-passes further endorsed. All findings including that Department not to be put in difficult position was with respect to that situation. In the instant case no subsidiary endorsed gate pass issued by a private party is concerned. Instead the matter concerns goods cleared by a PSU. Hence, this decision needs to be distinguished.

7. Therefore, the only other ground to be considered is that since decision of Hon'ble Tribunal in Echo Cables as in was for period prior to 1994, i.e. before

issue of Notification No. 15/94 C.E.(NT), 33/94 C.E.(NT) and 64/94 CE (NT), therefore it could not be relied upon. In this connection, I find that there are a number of decisions of Hon'ble Tribunal for periods even after 1994, which continue to lay down the same principle as in Echo Cables (supra).

Thus, in the case of C.C.E. v. Spark Engineering Industries , it was held that even a carbon copy of delivery challan of SAIL, a PSU, could be used for taking Modvat credit and the matter was remanded with these directions. In the case of C.C.E. v.Ajit Cotton & Ginning P.D.S.R. Mills as in , the Hon'ble Tribunal considered Revenue appeals against Order-in-Appeals dated 28.3.96. Relying on Tribunal's earlier order Nos. A-2333-39/96, NB dated 25.9.96 and A-2340-47/96 NB dated 26.9.96, the Hon'ble Tribunal held that Invoice-cum-Challan issued by M/s. LOC, a PSU, were valid documents for Modvat credit. The Tribunal extracted order of Ld.

Commissioner (Appeals) dt 15.2.96 in which he had made a conscious distinction between a PSU and a private party and held that no misuse could be ipso facto suspected in case of a Govt, controlled PSU. This principle was accepted by the Tribunal in para 4 of that order.

Furthermore, vide Trade Notice No. 62/CE/95 dated 28.11.95 i.e. a Trade Notice issued much after promulgations of these notifications (supra) relied upon by Revenue in this reference application, the Commissioner of Central Excise, Chandigarh informed the Trade that: 2. The matter has been considered and it is clarified that Modvat credit on the basis of documents issued by M/s. SAIL be allowed in case the same is otherwise in conformity with the instructionsAaw on the subject. In case of any doubt enquiries could be conducted with SAIL, in case of the Modvat amount indicated in the SAIL documents is found to be incorrect, the liability, if any, will be that of M/s. Steel Authority of India Ltd. (SAIL) and not of the customer who has purchased the goods from M/s. SAIL.

3. This Trade Notice is issued under provisions of Rule 233 of Central Excise Rules, 1944.

8. I find that this Public pronouncement of the procedures is also in line with the case-laws discussed above. Therefore, I find no merit in this Reference

application. The law followed in the concerned order of the Tribunal does not raise any of the question of law agitated in this application as it is a well settled law. Hence, the Reference application is rejected.