Emmes Metals Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-09-1999

Reported in : (2000)(90)LC579Tri(Mum.)bai

Judge : J T J.H.

Appellant : Emmes Metals Ltd.

Respondent : Cce

Judgement :

1. While hearing the stay application, it appeared that the main appeal could be taken up for disposal. This was done after granting waiver of pre-deposit of penalty of Rs. 10,000/-.

2. I have heard Shri D.D. Gwalani, advocate for the appellants and Shri Patwari, JDR for the revenue.

3. The appellants received a consignment of 516 ingots of zinc totally weighing 12.186 M/T under challan No. 024 dated 30.9.1992. Earlier, 520 pieces totally weighing 12.280 MT under Gate pass 000633 dated 19.9.1992 were transferred from the factory of M/s. Hindustan Zinc Ltd. to their depot which Gate pass was also endorsed to the present appellants. In this endorsement there was an error. While the endorsed quantity was less than the quantity covered under the gate pass, the endorsement certified that the entire quantity stood transferred. On a perusal of the gate pass, it was obvious that this was a clerical error. The Addl.

Commissioner held that the gate pass was defective and on this count he denied the credit. The assessee then filed the appeal.

The Commissioner (Appeals) disposed of the issue in the following words: I have gone through the case records and viewpoints expressed by both sides. During the course of personal hearing, they stressed on the point that the consignment delivered to them by M/s. Hindustan Zinc Ltd. under their challan No. 24 was a part consignment. I find that there is a contradiction in the appellants' argument as to whether it was a part consignment or 'full' used vis-a-vis the words in the endorsement. The letter suggest that there was a delivery of 'entire' consignment. In view thereof, I reject the appellants' contention. The letter dt. 6.11.1995, being a subsequent development cannot be considered as valid evidence.

3. I find that the entire issue has been dealt with in a wrong perspective. As I have observed, there was an error on the part of the maker of the endorsement in using the word "entire". The endorsement even shows the quantity which was actually sold to the present assessee. Even if it is to be held that the gate pass is invalid, there was a contemporaneous document in the form of the delivery challan.

This challan showed the details of the original gate pass under which the goods were removed from the manufacturer. The certificate issued by M/s. Hindustan Zinc Ltd. was held as acceptable modvatable document by CEGAT in their Judgment in the case of Ecko Cables (P) Ltd. v. CCE, New Delhi . In holding so, reliance was placed on certain instructions issued by CBEC. Therefore, if there was a doubt about the admissibility of the gate pass as the modvatable document, then the department could have relied upon the delivery challan.

4. I find that in spite of the infirmity in the gate pass, it was capable of indicating the duty paid nature of the goods and its receipt. In the Tribunal decision in the case of Vee Kay Chemicals v.CCE an identical issue had come up for consideration and the Tribunal held that the endorsed Gate pass for part supply was to be regarded as a valid duty paying document.

5. Thus on the basis of both the documents, the assessees were eligible for the benefit. The impugned order is set aside. The appeal is allowed with consequential

relief.