

Vikky Castings (P) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-29-2000

Reported in : (2000)(69)ECC301

Judge : S T G.R., a Unni

Appellant : Vikky Castings (P) Ltd.

Respondent : Cce

Judgement :

1. This is an appeal against confirmation of a demand of Rs. 20,64,746.98 and imposition of penalty of Rs. 20,00,000.

2. The facts of the case in brief are that the appellants are manufacturer of M.S. Ingots. The officers of the Central Excise conducted surprise checks on 22.12.92 and resumed certain records and documents in regard to availment of Modvat credit for the period from 1.4.91 to 31.3.92 and 1.4.92 to 31.3.93. Scrutiny of the records revealed that the appellants had availed Modvat credit irregularly. It was, therefore, alleged that the appellants had availed Modvat credit on the strength of documents described as material gate passes. It was also alleged that these documents contained no details regarding rate of duty and amount of Modvat credit. It was also alleged that material gate passes were not specified as duty paying documents under the Central Excise Rules, that proviso to Sub-rule 2 of Rule 57G stipulated that no credit shall be taken unless the inputs are received in the factory under the cover of a gate pass and AR. I and Bill of Entry or any other

documents as may be prescribed by the Board in this behalf.

3. The second allegation against the appellant was that although the appellant had received plate, small coiled pickled, H.M. Sticket, High Silicon sheet cutting, H.M. Bent Plate and Thick H.B. Sheet 0.80 mm, originally cleared as articles but in the records they described them as steel waste and scrap; that these items were not scrap and waste and thus there was a mis-declaration and this way they wrongly availed Modvat credit.

4. The third allegation was that they had taken Modvat credit equal to the amount shown as duty paid as against the admissible amount of Rs. 660. The appellants had violated the provisions of Notification No.177/86 dated 1.3.86 and thus, it was alleged that they had wrongly availed Modvat credit of Rs. 46,905.50.

5. The fourth allegation against the appellant was that they had availed credit of Special Excise Duty during the month of March' 93 though Excise Duty was withdrawn in the budget of 1993-94 introduced on 28.2.93. On this account it was alleged that they had wrongly availed Modvat credit of Rs. 12,732.

6. The total of all the irregular credit alleged to have been taken by the appellant was of the order of Rs. 20,64,756.98. In reply to the SCN the appellants explained their case in detail allegation-wise as well as Annexure-wise as there were about 13 Annexures based on the four allegations as indicated above. The trust of the defence was that the Range Supdt. had assessed all the R.T. 12 Returns for the years 1991-92 and 1992-93 finally and had never raised any objection in regard to availment of irregular credit. It was, therefore, contended by them that full facts were known to the Department and as such there was no ground to entertain the idea of suppression of facts and wilful mis-statement of facts as alleged. It was, therefore, submitted that since there was no suppression mis-statement etc. proviso to Section 11-A(1) could not be invoked in their case. It was submitted that the SCN was issued on 13.7.94 for the demands for the period from 1.4.91 to 31.3.93, thus the entire demand was beyond six months and was time barred. In the impugned order in the portion of discussions and findings while mentioning the contention of the appellant the Ld.

Commissioner recorded: The company in their written defence reply dt. 27.9.96 and during the personal hearing on 26.9.97 have contended that Notification No. 16/94-CE dt. 30.3.94 had prescribed for the purpose of Rule 57G provided that the documents had been issued from 1.4.94 and the credit under the said Rule had been taken on or before 30.6.94. As such all the documents on which Modvat credit had been taken were specified duty paying documents. They further submitted that all the monthly R.T. 12 returns for 1991-92 and 1992-93 were filed with Range Supdt. alongwith photo copies of relevant duty paying documents and extract of RG 23-A Part I and II and the Range Supdt.

had assessed all the R.T. 12. returns and never raised any objection in regard to availment of irregular credit on any R.T. 12. Thus, the full facts were known to the department and as such no ground to entertain the idea of suppression of facts by wilful statement of facts.

On page 10 of the impugned order in the last paragraph the Ld.

Collector further observed: They have contended in their defence reply that the allegation is without foundation because all the 25 gate passes pertaining to the month of April '92, June and July'92 and all the duty paying documents were submitted with R.T. 12 alongwith RG 23-A Parts I and II to the Range Supdt. who assessed the R.T. 12 returns on 28.7.92, 4.11.92 and 5.12.92. All the original G.P.Is were signed by Range Supdt. on 22.5.93 in token of their defacement and thus the allegation is not sustainable.

The company in their written defence reply dt. 27.9.96 and during the course of personal hearing on 26.9.97 all the G.P. Is have been signed by Range Supdt. on 27.5.93. There was no suppression of facts nor mis-declaration.

7. Arguing the case for the appellants Shri R. Santhanam, Ld. Counsel submits that all the original documents including the duty paying documents were resumed by the Preventive Officers on their visit to their factory on 22.12.92. He submits that they made a request for supplying the original documents to show that the documents were defaced but the same were not supplied to them by the authorities. He submits that the entire demand is beyond six months. Ld. Counsel

contended that all the facts i.e. Modvat credit was being taken on the strength of material gate passes and other documents were known to the Department as the photocopies of the documents were furnished alongwith the R.T. 12 Returns and the R.T. 12 Returns were examined and finalised by the Range Supdt. who is the competent officer for the purpose and that the Range Supdt. had not raised any allegation against the appellants. He submits that since there was no mis-statement and suppression, therefore, invocation of longer period in terms of the proviso to Section 11A(1) was not called for.

8. Regarding allegation No. 2, Ld. Counsel submitted that if there was a dispute about classification of the goods, they were not concerned with that classification. He submits that the appellants had got the defective plates or sheet cuttings which for their purposes were only scrap and waste and therefore, they had entered them under the Col.

waste and scrap in RG 23-A Part I and since the original documents were available to the authorities at the time of finalising RT 12 returns and since they did not raise any objection at that time, they could not raise a further objection at a very late date.

9. He submitted that during the period there were instructions issued by the Central Board of Excise & Customs in exercise of the powers under Rule 57G(2) that challans/certificates of the Public-sector undertaking may be treated as duty paying documents for purpose of Modvat credit. He submitted that since these documents were accepted by the authorities below during the material time without any objection there was no question of any objection at a subsequent date. In regard to taking credit of a higher amount higher than Rs. 660 Ld. Counsel submits that Modvat credit was taken on the strength of the documents produced and since the documents pertained to breaking up of ships and floating structures of foreign origin, therefore, the appellants had correctly taken Modvat credit as the provisions of Notification No.177/86 dt. 1.3.86 read with Notification No. 35/91 dated 15.11.99 were not applicable in their case as the scrap had arisen out of the ship/floating structures of foreign/origin.

10. About the fourth allegation Ld. Counsel submitted that in the Budget for the year 1993-94, it was indicated that Basic Excise Duty and Special Excise Duty were merged from 28.2.93; that the Govt.

allowed the utilisation of the balance of SED lying in RG 23-A Part II on 28.2.93 for utilisation against payment of basic duty; that the Govt. issued supplementary instructions that credit of SED paid on inputs prior to 28.2.94 and retained by manufacturer after 1.3.94 may be allowed to be utilised for payment of Basic Excise Duty; that the Govt. however specified time limit that credit of such SED should be utilised before 31.3.94. In terms of these instructions, the appellant availed and utilised the alleged credit in respect of SED before 31.3.94. He, therefore, submits that even on merits, the Department has not been able to make out a case against the appellant.

He submits that on limitation the appellants have a very strong case in their favour inasmuch as all the documents which are being objected to now were placed before the Range Supdt. who after examination all these documents finalised the assessment in R.T. 12 Returns and thus there was neither any mis-statement or suppression of facts in their case and therefore, invocation of the proviso of Section 11A(1) was uncalled for. He submits that the entire demand is beyond six months and therefore time barred and prays that the appeal may be allowed.

11. Shri M.M. Dubey, Ld. DR submits that the Ld. Commissioner had passed a detailed order giving reasons for his findings. He submits that mis-declaration as to inputs as indicated in allegation II is clear and since there was mis-declaration, therefore, the longer period has rightly been invoked.

He reiterated the findings of the Ld. Commissioner and submitted that the duty has been rightly demanded and deterrent penalty has correctly been imposed. He, therefore, prays that the appeal may be rejected.

12. Heard the rival submission. We find that though the Ld.

Commissioner in his findings and discussions portion had reproduced the contention of the appellant elaborately but he has not given any ruling as to how

there was mis-statement or suppression in the face of the contention of the appellants that they had produced the documents before the proper authorities and proper authorities after examining those documents accepted those documents and finalised the assessments in R.T. 12 Returns. Ld. Commissioner has examined in detail other aspects but he has not dealt with these aspects specifically as to why the contention of the appellants that their R.T. 12 Returns were finalised during that period and that the documents were defaced during that period itself. As the Ld. Collector has not given any clear finding on the aspect of the suppression and mis-statement, we consider it a fit a case for remand. In view of the fact specifically that the original documents were available in the office of the Ld. Commissioner which will need examination for giving a finding on this aspect. We, therefore, remand the appeal with the direction that he will examine the contention of the appellant in terms of the documents (original) which are alleged to be available in the office of the Commissioner himself. He will examine this contention and pass appropriate orders after extending an opportunity of being heard to the appellants in this case. The appeal is, therefore, allowed by way of remand.

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