

Jay Rapid Rollers Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-07-2000

Reported in : (2000)(69)ECC520

Appellant : Jay Rapid Rollers Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. These are three appeals - two filed by M/s. Jay Rapid Rollers Ltd. and its Managing Director and the one filed by the Revenue, being aggrieved with the common order-in-original dated 21-10-1998 passed by the Commissioner of Central Excise, Gurgaon. They were heard together and are being disposed of by this common order.

2. The matter relates to the modvat credit in respect of the inputs used in the re-rubberisation of old and used rollers which were removed after re-rubberisation without payment of any central excise duty. A modvat credit of Rs. 22,63,884.75 was alleged to have been utilised unauthorisedly by suppressing the facts of utilisation of modvated inputs in such exempted goods. The Commissioner of Central Excise, Gurgaon (Delhi-III), who adjudicated the matter observed that the use of the inputs in respect of which the appellants had availed of modvat credit of duty, in the re-rubberisation of old and used rollers on which no duty had been paid, had never been intimated to the Department by any means, and the matter was detected only when the Central Excise Officers visited their factory on 8-8-1996. The intimation had only been given about the entry of the duty paid old and

used rollers, but the use of modvated inputs on re-rubberising such exempted rollers had at no stage been given. As regards the role of the Director, it was found that it was he who was looking after the day-to-day affairs of the company and was aware of the mis-utilisation of modvat credit. He confirmed the demand of Rs. 22,63,884.75, imposed a penalty of Rs. 6 lakh on M/s Jay Rapid Rollers Ltd. and a penalty of Rs. 2.5 lakh on Shri Sukhbir Singh, Managing Director.

The Revenue in their appeal had pleaded that the order of the 'Commissioner in not imposing mandatory penalty under Rule 57-1(4) of the Central Excise Rules, 1944 (hereinafter referred to as the 'Rules'), and in not demanding interest on the duty evaded under Rule 57-1(5), was not correct, legal and proper.

2. The matter was heard on 10-12-1999 when Shri J.S. Agarwal advocate, appeared for M/s. Jay Rapid Rollers Ltd. Shri M.M. Dubey, JDR, and Shri R.D. Negi, SDR, represented the Revenue.

Shri J.S. Agarwal, advocate, submitted that while it was admitted that the appellants had not maintained correct accounts, there was no justification for invoking the extended period of limitation. He referred to the Tribunal's decisions in the case of (i) Asha Nitrochem Indus. Ltd. v. CCE, Surat, 1998 (98) E.L.T. 203(Tribunal); and (ii) National Organic Chemical Indus. Ltd. v. CCE, Mumbai-UI, 1999 (112) E.L.T. 638 (Tribunal). As regards the penalty on the Managing Director, he referred to the Court Room Highlights as appearing at 1997 (94) E.L.T. A-248. He prayed for remand of the matter.

As regards the appeal filed by the Revenue, it was submitted that Rule 57-1(4) was inserted in the Rules on 23-7-1996 under Notification No.14/96-C.E. (N.T.), dated 27-7-1996, while the period involved in these proceedings is from 1993-94 to August, 1996.

In reply, Shri M.M. Dubey, JDR, stated that it was a clear case of suppression. The assessee had not intimated that the modvated inputs will be used into the repairs of the rollers. The intimation that rollers will be received by them for repairs is no intimation as regards the use of modvated inputs. This suppression came to notice only when the Central Excise Officers visited the factory of the assessee on 8-8-

1996. In the declaration dated 17-9-1993 at page 32 of the paper book there was no mention of re-rubberisation. He referred to the admitted position that the party had not intimated the Central Excise Department about the receipt of the old rollers for re-rubberisation and their clearance without reversal of the Modvat credit already taken on receipt of rubberisation inputs. As regards the loss of inputs in re-rubberisation of old rollers, there were no records and there was no case for any benefit in this regard. He relied upon the Allahabad High Court decision in the case of Super Cassettes Indus. Ltd. v. UOI, 1997 (94) E.L.T. 302 (Allahabad). It was pleaded that the appellants had no case and there was no justification for remanding the matter.

As regards the appeal filed by the Revenue, Shri R.D. Negi, SDR; submitted that the Commissioner had not dealt with the provisions of Rule 57-1 of the Rules. The show cause notice was issued on 27-11-1997 when the provisions of Rule 57-1(4) were in force. He referred to the Tribunal's Larger Bench decision in the case of Atma Steels Pvt. Ltd. CCE, Chandigarh, 1984 (17) E.L.T. 331 (T), and Josts Engg. Co. Ltd. v.CCE, Mumbai-UI, 1998 (99) E.L.T. 662 (T).

The learned advocate replied that the visit by the Central Excise Officers was paid on 8-8-1996 and the period was upto August, 1996. The provisions of Rule 57-1(4) came into force on 25-7-1996. Thus, he pleaded that there was no ground for imposing penalty under that Rule.

3. We have carefully considered the matter. The assessee was doing re-rubberisation of the old rollers received from the various customers. These re-rubberised old rollers were removed without payment of central excise duty. The assessee was using the raw-materials on which they had availed modvat credit for the re-rubberisation of the old rollers which were removed without payment of central excise duty.

No intimation of such utilisation of modvated inputs in exempted goods was given to the Central Excise Department. While information had been given of the receipt of old and, worn out rollers for purposes of repairs, no intimation had been sent about the use of Modvated inputs in these exempted goods.

In the show cause notice dated 27-11-1997, it was mentioned that the suppression of facts came to notice only when the Central Excise Officers visited the factory premises of the assessee on 8-8-1996.

There is a clear finding by the adjudicating authority that the assessee had suppressed the material facts from the Department with the intention to evade payment of central excise duty.

4. The show cause notice had been issued by the Commissioner of Central Excise on 27-11-1997. The period involved is from 1993-94 upto August 1996. The grounds on the basis of which it was alleged that the extended period of limitation was applicable had been detailed in the show cause notice dated 27-11-1997 as under - "Now, therefore, it appears that the party did not disclose the fact in the declaration filed under Rule 173Q regarding the receipt and re-rubberisation of old and used rollers inasmuch as they suppressed the fact regarding use of duty paid inputs on which credit was availed under Rule 57G in the rubberisation of the said used and old rollers with an intent to avail inadmissible modvat credit as well as the party wilfully neither took permission from the proper officer for maintaining separate set of invoice nor intimated the serial numbers and use thereof as required under the provisions of Rule 52A of the Central Excise Rules and, therefore, this amounted to suppress the clearances of re-rubberised rollers." 5. The Commissioner of Central Excise who adjudicated the matter had discussed this aspect of limitation as under - I do not find any force in the argument of the party that activity of re-rubberising the old rollers was in the knowledge of the central excise officers and they had started the job only after receiving a letter from the Assistant Commissioner of Central Excise, Gurgaon. I observe that the party's activity of re-rubberising the old rollers was in the knowledge of the department but it was never intimated to the department that they would be using inputs in re-rubberising which they had taken Modvat credit of duty. Hence the party had suppressed the material fact from the department with the intention to evade payment of central excise duty. At the time of intimating about the job work and receipt of duty paid old rollers, the party should have also intimated the department about the use of common inputs on which they had availed Modvat credit of duty. This fact was never intimated by the party and even they have not

claimed it evidently because no such intimation was given by the party. I observe that in their replies the party has indirectly admitted the allegation of using inputs on which they had taken credit of duty. The department has also demanded central excise duty under Rule 57-I of the Central Excise Rules, 1944 which deals with the wrong availment of Modvat credit of duty. The party has failed to produce evidence showing purchase of sufficient inputs on which they did not avail credit of duty and which were used in the re-rubberising of old rollers. By not carrying the Balances in R.G.23-A Part-I, the party has committed the procedural mistake and such a lapse cannot be claimed as a benefit to the party. This claim of the party makes mockery of law that they had not completed the records as they wanted to establish that they had sufficient balance of inputs on which they did not take Modvat credit of duty. Had the party been fair and sincere in their deeds, they should have kept all the records complete as per the provisions of the central excise law and records of inputs to be used in re-rubberising should have been kept separately as required under the law. The party cannot be given the benefit of their misdeed in not completing the statutory records. The Judgment of the Hon'ble Supreme Court of India quoted by the party is not applicable in their case as they had not intimated the department at any stage about the use of duty paid inputs on which credit was taken in the re-rubberising of old rollers which they cleared without payment of excise duty. I find that the party had given all the intimations to the department which are required to be given for receipt of duty paid goods and deliberately avoided given the material intimation about the use of inputs on which credit was taken with the sole intention to evade payment of central excise duty. Thus the charge against the party is established beyond any reasonable doubt.

6. After giving our careful consideration to the case we agree with the adjudicating authority that the extended period of limitation is correctly applicable to the facts and circumstances of this case.

7. There is no doubt that Modvat credit was not admissible when the inputs were used in the processing of goods which did not carry any duty liability. In this case the old and used rollers after subjecting them to the process of re-rubberisation did not attract any central excise duty liability. Thus, the assessee was required to reverse the credit taken in respect of the inputs used in such exempted goods.

This aspect of the matter is entirely covered by the Supreme Court decision in the case of Chandrapur Magnet Wires Pvt. Ltd. v. CCE, Nagpur, 1996 (81) E.L.T. 3 (SC).

Thus, the amount of modvat credit taken on the inputs utilised in the manufacture of final exempted goods was to be debited in the modvat account.

Reference may also be made to the Allahabad High Court decision in the case of Super Cassettes Indus. Ltd. v. UOI, supra. The High Court had observed that the modvat credit is only provisional unless inputs are used in accordance with Rule 57A and 57F and either excise duty on the final product is paid or the inputs are otherwise disposed of for home consumption or export etc. It is only for certain accounting purposes that the amount is credited to the personal ledger account (PLA) and can be used as credit balance for actual payment of duty at the time of removal of the goods. It was also mentioned that reversal of the credit in respect of exempted final products is implied in the Modvat scheme.

The Hon'ble High Court also observed that the modvat credit taken in respect of the inputs which are in stock has to be reversed if the product is exempted from excise duty from a particular date. The credit in respect of the inputs that have been used in the manufacture of final product which have become exempt also become inadmissible and have to be reversed.

8. In view of the discussion, we confirm the demand of duty of Rs. 22,63,884.75. The amount of penalty of Rs. 6 lakh imposed under Rule 173Q on M/s. Jay Rapid Rollers Ltd. is reduced to Rs. 3 lakh (rupees three lakh only).

No specific role of Shri Sukhbir Singh, Managing Director, had been discussed in the impugned order-in-original. The only ground for imposing penalty of Rs. 2.5 lakh is that he was looking after the day-to-day affairs of the company and was aware of the fact that inputs on which credit had been taken were being used in re-rubberisation of old rollers cleared without payment of excise duty.

Taking note of the nature of the dispute and in the facts and circumstances of the case, we set aside the penalty of Rs 2.5 lakh imposed on Shri Sukhbir Singh,

Managing Director.

The learned advocate had referred to the Court Room Highlights as appearing at 1997 (94) E.L.T. A-248. We have taken into account the observations of the Hon'ble Supreme Court in coming to this view as regards the penalty on Shri Sukhbir Singh, Managing Director, is concerned.

9. As regards the appeal filed by the Revenue, the charges related to the period 1993-94 upto August 1996. The show cause notice was issued on 27-11-1997. The Revenue had pleaded that when the show cause notice was issued on 27-11-1997, the provisions of Rule 57-I (4) were in force. It is also pleaded that the Commissioner of Central Excise had given no finding with regard to the charging of interest under Rule 57-1(5).

Rule 57-I (4) was inserted in the Central Excise Rules by Notification No. 14/96-C.E. (N.T.), dated 23-7-1996. The period involved in the present proceedings is from 1993-94 upto August, 1996. Barring the period from 23-7-1996 upto the end of August 1996, the whole of the period of demand is prior to the insertion of Sub-rule (4) in Rule 57-I of the Rules. *Brij Mohan v. Commissioner of Income-Tax, New Delhi*, 1979 (120) ITR 1(SC), had held that when penalty is imposed for the concealment of particulars of income, it is the law ruling at the date on which act of concealment takes place, which is relevant. *Sonia Engg. Works v. CCE, New Delhi*, 1998 (29) RLT 630 (T), the Tribunal has observed that the penalty under Section 11 AC was not imposable in case the duty liability pertained to the period prior to Section 11 AC came into force. It was also observed that interest under Section 11AB of the Central Excises Act, 1944 was not leviable in respect of the duty demand pertaining to the period prior to Section 11AB came into effect.

Similarly in the case of *Maruti Udijog v. CC, New Delhi*, 1998 (101) E.L.T. 675 (T), it was held that the duty on clearances becoming payable before 28-2-1996, the appellants were not liable to pay interest under Section 11AB of the Central Excises Act, 1944. It was also observed that the matters relating to the period when Section 11 AC was not on the statute book, penalty was not leviable thereunder.

10. We, therefore, consider that the omission in not imposing penalty under Rule 57-I (4) and in not demanding interest under Rule 57-I (5) of the Rules is not to be interfered with, and the facts and circumstances of the case do not justify any interference in the order already passed on this score.

11. The learned SDR had referred to the Tribunal's decision in the case of Atma Steels Pvt. Ltd. v. CCE, Chandigarh, 1984 (17) E.L.T. 331 (T), wherein it has been observed that the proceedings initiated with reference to Rule or Provision validly subsisting at the time of initiation of proceedings can continue in spite of repeal or substitution of original provisions. Here it is not a case of any repeal or substitution. Penal provisions have to relate to specific contraventions and when the goods were cleared, the penal provisions were not in force and, therefore, no penalty was imposable.

Similarly, the observations in the case of Josts Engg. Co. Ltd. v. CCE, Mumbai-III, supra, are also not applicable to the facts and circumstances of the present case. In that case the Tribunal had observed that the provisions of Section 11-AB are applicable only in cases where show cause notices are issued after the enactment of those provisions.

12. On behalf of the appellants, reference has been made to the Tribunal's decision in the case of Asha Nitrochem Indus. Ltd. v. CCE, Surat, 1998 (98) E.L.T. 203 (T). In that case a number of gate passes under which goods were received were shown in the RG 23 Form and defaced by the Superintendent by making the endorsement. The inputs though not declared, their receipt and the fact of availing modvat credit was brought to the Department's notice. It was in such circumstances that the Tribunal held that the extended period of limitation was not applicable.

In the present case, there was no declaration with regard to the use of modvated inputs in the exempted goods. The legal position is clear and has been settled by the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires Pvt. Ltd .v. CCE, Nagpur, 1996 (81) E.L.T. 3 (SC). We, therefore, consider that the decision relied upon by the assessee is of no help to them.

Reference has also been made to the Tribunal's decision in the case of National Organic Chemical Indus. Ltd. v. CCE, Mumbai-III, 1999 (112) E.L.T. 638 (T). When inputs were declared and RT-12 returns with invoices and RG 23A extracts were regularly submitted, the Tribunal observed that the deliberate suppression with intent of wrong availment of modvat credit was not born out and extended period of limitation was not invocable. In the present case, the inputs were used in the processing of exempted goods and with regard to the use of modvated inputs in exempted goods, no information had been furnished to the Revenue authorities in any manner and at no stage. The facts are thus clearly distinguishable.

13. Taking all the facts and considerations into account, subject to the reduction in the amount of penalty, we dismiss the appeal filed by M/s. Jay Rapid Rollers Ltd. as well as the appeal filed by the Revenue.

The appeal filed by Shri Sukhbir Singh, Managing Director, with regard to the penalty imposed on him, is allowed.

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