

Commissioner of C. Ex. Vs. U.P. State Yarn Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-24-2000

Reported in : (2000)(120)ELT747TriDel

Appellant : Commissioner of C. Ex.

Respondent : U.P. State Yarn Co. Ltd.

Judgement :

1. The Revenue is in appeal against the Order-in-Appeal dated 21-8-1998 passed by the Commissioner (Appeals), Allahabad. The appellate authority has set aside the Order passed by the Assistant Commissioner Central Excise; Division-II, Allahabad in which he had confirmed the demand amounting to Rs. 64,020.00 under Rule 57-1 on the respondents for availing ineligible Modvat credit. In one case the invoice for Rs. 45,320/- was endorsed in favour of the party. Another amount of Rs. 3,900/- of Modvat credit is taken wherein the invoice is in the name of the Head Quarters at Kanpur but the goods are consigned to the appellants. In the Order-in-Appeal it is stated that the respondents are a unit of U.P. State Yarn Co. Their Head Quarters Office and Administrative Office are at Kanpur. The company has its manufacturing units at Banda, Rasra (Ballia), Jaunpur and Meja (Allahabad). Orders for the purchase of fibres are placed from the Administrative Office at Kanpur but, the place where the goods are to be delivered is also indicated in the purchase Orders. It appears that the supplier units, by inadvertent omission, despatched the fibre meant for the Banda Unit to Rasra Unit on Invoice No. 63, dated 31-3-1995. Similarly the Invoice No. 677, dated 18-5-1997 was

issued in the name of the Administrative Office of the company located at Kanpur. The Commissioner (Appeals) has observed that the Assistant Commissioner had not taken into consideration the documentary evidence produced to prove that the inputs were in fact received and consumed in the appellant's unit at Banda. The Commissioner (Appeals) has relied on the Board's clarification in M.F. (D.R.) Circular No. 211/45/96-CX, dated 14-5-1996 advising that credit should not be denied to the manufacturing unit on the strength of invoice issued in the name of Head Office/Regd Office and which is endorsed to the manufacturing unit. He has also relied on the following decided cases :Heinz India (P) Ltd. v. CCE, Kanpur 2. In the above decisions it is held that in the case of multi-unit companies where orders are placed from the Head Office, Modvat credit should not be denied where credit is taken by the manufacturing unit on the strength of invoice issued at the address of the Head Office/Registered Office of the same company with or without endorsing the invoices to the credit taking unit. By taking into consideration the above cited decisions and the Board instructions, the Commissioner (Appeals) has allowed the appeal of the party.

3. It is contended in the Revenue appeal that the impugned invoices were originally addressed to Kanpur and Rasra Units. The party has thus clearly contravened the provisions of Rule 57F(1) (ii) as the transfer of inputs could have been made under this Rule and not by endorsing the invoices as such, it is also pleaded that the reliance on the Board's circular is wrongly placed.

4. The Commissioner (Appeals) has also allowed the credit of Rs. 14,800/- taken on paper cones as the said item was declared as capital goods under Rule 57T instead of inputs under Rule 57G. The Revenue has relied on the decision in the case of Paro Food Products v. CCE 1988 (38) E.L.T. 332 (T) and British Physical Laboratories v. CCE 1994 (74) E.L.T. 593 (T) in which it is held that non-specification of the inputs in the declaration is not a condonable lapse. It is submitted that declaration under Rule 57T can by no stretch of imagination be deemed to be also a declaration under Rule 57G as two schemes are distinctly separate both in contents and scope.

5. I have heard Shri T.A. Arunachalam, JDR, for the Revenue and Shri Rajesh Kumar, Advocate, for the respondents. In my view the Modvat credit availed on the invoices totally amounting Rs. 49,220/- is broadly covered by the Board instructions, cited above. The appellants are a part of the multi-unit organisation of U.P. State. On verification of the documents it was learnt that their Head Office is at Kanpur, the invoices were addressed by mistake to the Kanpur and Rasra units where the orders were placed from the Hqrs. Office for the Banda unit. It is stated that the transfer of inputs could have been made under Rule 57F(1)(ii) and not by endorsement of the invoices. When basically there is no objection to the transfer of the inputs, by merely not following a particular procedure, cannot vitiate the transfer. Therefore, there is no ground to interfere in the findings of the Commissioner (Appeals), in this respect. As regards the credit of Rs. 14,800 taken on paper cones, the Commissioner (Appeals) has observed that the same were declared under Rule 57G on 9-10-1996, that except for the heading of the declaration, all other prescribed details required to be declared under Rule 57G and Rule 57T are identical and the credit whether taken in RG-23C meant for capital goods or in RG-23A meant for inputs is available for utilisation towards payment of excise duty. The Ld. Advocate of the appellant has produced a copy of the declaration dated 9-10-1996 filed by his clients. It is observed that in this 'Paper Cone' is declared as one of the inputs under Rule 57A. Even otherwise also, if the credit is expunged from one account, it will have to be allowed for credit in other account.

6. In view of the above I am of the view that there are no grounds to deny the Modvat credit to the respondents. In the face of these facts, there is no force in the revenue appeal and the same is rejected.

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