Nrc Ltd. Vs. Commissioner of Central Excise

Nrc Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/18576

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-30-2000

Reported in : (2000)(121)ELT128Tri(Mum.)bai

Appellant : Nrc Ltd.

Respondent : Commissioner of Central Excise

Advocate for Pet/Ap. : Shri. M.H. Patii

Judgement :

1. NRC Ltd. has sought for the dispensation of the payment of duty as condition precedent for hearing its appeal and for the stay of the recovery, by the department of the amount confirmed in the orders of the Commissioner of Central Excise, Mumbai-III dated 26-10-99 i.e. Rs. 2,14,139/- of the Modvat credit disallowed and penalty of Rs. 2,000/- by initiating the recovery proceedings pending disposal of the appeal.

2. The grounds on which the relief sought for is that the applicants manufacture rayon nylon yarn and various chemicals by utilising the various inputs considered in the orders of the lower authorities on which they have availed the Modvat credit, which are capital goods.

There was a confusion throughout in that regard both in the department and the industry, which are now made clear by the various Tribunal decision regarding the allowing of the Modvat credit under Rule 57Q irrespective of the chapter headings.

The instant items are very much connected with the integrated manufacturing process within the factory premises and the availment of Modvat credit in that regard is legal and proper. So long as the use of an article is a technical necessity till the stage of putting the goods in the market stream is concerned the said use is to be held in or in relation to the manufacture of the final product as per the judgment of the Supreme Court and other judicial forums in the number of judgments. The impugned items are essentially required for the manufacture of final product and are squarely covered under the term capital goods and are eligible for modvat credit. A penalty imposed is not sustainable as the credit is admissible on the merits, and there is no mens rea on the part of the applicants. The applicant's company is passing through a severe financial crisis due to extremely weak market conditions and has incurred heavy loss during the financial year April 1998-March 99 and continued to incur loss in the next year also. The lower authorities are pressing for detention of the goods review of the impugned order in spite of filing this appeal, which would obviously affect their financial position, and they are undergoing a very awkward position.

Due to poor demand, unremunerative prices and increase in administered costs like power, coal etc. it is unlikely that the applicant's company work will improve in the near future. If the applicants are made to deposit the Modvat credit and penalty amount it would obviously affect their working and jeopardise their operation. In the stay application Ext. D in Clause (d) the applicant has mentioned that the ld.Commissioner (Appeals) granted partial stay on pre-deposition of the duty under exhibits Bl & B2 and decided the appeal. As per exhibits Bl & B2 a stay order is passed granting cent percent waiver of the pre-deposit of duty in excess of Rs. 10 lakhs and the penalty, and the applicants were directed to pre-deposit the said Rs. 10 lakhs within 15 days from the date of the receipt of the order, and report complianced.

Further it is seen under exhibit B2 that the applicants have made a consolidated debit entry from RG 23C part II (Rayon) of Rs 10 lakhs on 19-2-98 and of Rs. 5 lakhs on 9-3-98. In EA 3 under column 9 duty of Rs. 2,14,139/- and penalty of Rs. 2000/- as per column 8A clauses (iii) & (iv) is not deposited and this stay application is filed.

3. In support of the stay application, Shri M.H. Patii the Ld. Counsel for the applicant has filed a chart showing the inputs involved and its usage and the decisions which support the case of the applicant that they are the capital goods, which entitles them to get the Modvat credit. He has also produced the case laws in support of it. He has further urged that in view of this position the stay application deserves to be allowed. Shri U.V. Gaitonde, JDR has pointed out that the case of the applicant can be accepted for the waiver of the pre-deposit, regarding the inputs Sonic cleaning system which is covered by CCE, Meerut v. SRF Ltd. - 2000 (115) E.L.T. 169 (T) and Process Control Instrument covered by 1998 (103) E.L.T. 569 (T) and Valves of different types, only pressure reducing valves by 1999 (105) E.L.T. 124 and Bourdon Pressure gauge & fiebig low pressure capsule gauges by 1998 (103) E.L.T. 569 and lightning arrestor as per 2000 (115) E.L.T. 743 and Solenoid valves by 2000 (115) E.L.T. 738 and regarding the other inputs he has submitted that the rulings are not relevant. They do not cover other inputs and the pre-deposit for the said inputs as per the impugned order is necessary.

4. Perused the impugned order and the stay application and the chart given by the ld. Counsel for the applicant and the rulings cited therein. Regarding the usage of the inputs and its participation in the manufacture of final products the matter is arguable regarding the inputs Spirax ball float compressed air trap, SS Bushing, Energy saving device, Aquarius PH/Redox analyser, VCG grade cement, flame proof air circulator, transformer oil air circulator, 250 W HPMV safety well glass, spare impeller for XE-9 fans and water meter. For the input Spares for flame failure unit amplifier firetron cell, ruling in 2000 (116) E.L.T. 170 covers for the eligibility of Modvat credit. Taking into consideration the submission of both sides, the applicant is required to make a pre-deposit of Rs. 30,000/- in view of the fact, as observed above, the matter is arguable regarding the availment of the Modvat credit on the above inputs, i.e. capital goods.

5. The financial hardship as tried to be made out in the stay application is not substantiated by any material. It is not clear as to the actual quantum of loss sustained during the financial year 1998-99 and 1999-2000. The other statements in the application are too general.

Looking to the facts and circumstances of the case, the applicant is not in such a bad position to make the pre-deposit of Rs. 30,000/-, when he has complied the orders of the Commissioner (Appeals) by depositing Rs. 15 lakhs as already referred above. Hence the following order.

For the reasons discussed above, the application is allowed in Part.

The applicant is directed to make a pre-deposit of Rs. 30,000/- within one month from the date of receipt of the order and report compliance on 18-8-2000 subject to which recovery of the same and balance amount and penalty is stayed.