

Bharti Telecom Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-20-2000

Reported in : (2001)(95)LC203Tri(Delhi)

Judge : B T K.K.

Appellant : Bharti Telecom

Respondent : Cce

Judgement :

1. The issue in this appeal relates to the availment of modvat credit by the appellants beyond a period of six months from the date of issue of the modvatable documents in contravention of the provisions of Rule 57G(2). The amount involved in the appeal is Rs. 7,20,903.60. The three documents concerned in this case are two Bills of Entry both dated 11.8.1995 and one Bill of Entry dated 14.8.1995. The credits in respect of the inputs imported under these Bills of Entry were taken by the party in part II of their RG 23A account on 21.5.1996 and 24.5.1996 respectively, whereas these inputs were received in their factory on 3.11.1995 the date on which they made entries in part I of the same account. The Assistant Commissioner of Central Excise, Gurgaon vide his order dated 10.9.1997 confirmed the demand of the aforesaid amount on the appellants and also imposed a penalty of Rs, 5000/-. The appeal of the party was rejected by Commissioner (Appeals), New Delhi vide her order dated 9.12.1999 upholding the order passed by the Assistant Commissioner leading to the present appeal.

2. I have heard Sh. P.S. Bedi, Consultant for the appellants and Sh.

K.K. Goel, SDR for the respondents. The Ld. Consultant for the appellants submitted that the account of the inputs received by assessee is maintained in form RG 23A which has two parts viz. part I and part II. In part I of the form the stock account of 'inputs' is maintained whereas part II contains the account of the duty credit. He submitted that both the parts of the form have their own columns of Sr.

No. and date. Therefore, it is the contention of the Ld. Consultant that there can be different dates for making entries for credit in part I and part II in respect of the same consignment of inputs and if an entry is made under the columns in either of the parts within six months of the date of issue of a particular document, the same would satisfy the impugned provisions which stipulate that the manufacturer shall not take credit after six months of the date of issue of any of the specified documents. It is contended that since, in this case the credit of inputs is taken in part I of the RG 23A within six months of the date of the Bills of Entry, there is no ground for denying the modvat credit on them. I have carefully considered these submissions.

In my view these arguments of the Ld. Consultant for the appellants cannot be countenanced. First of all the format of maintaining a prescribed account would not determine the parameters of the given provisions of law under which it is prescribed and secondly, the whole scheme under consideration concerns 'modvat credit of duty' paid on the inputs. Rule 57A(1) provides "The provisions of this section shall apply to such finished excisable goods...for the purpose of allowing credit of any duty of excise or the additional duty under Section 3 of Customs Tariff Act. 1975 ...and on the goods used in or in relation to the manufacture of said final products or and for utilizing the credit so allowed towards payment of duty of excise leviable on the final products...

Besides this, Rule 57G(1) itself provides- "Every manufacturer intending to take credit of duty paid on inputs under Rule 57A, shall file a declaration with the Assistant Collector of Central Excise having jurisdiction over his factory....

3. In view of these dear provisions under the Central Excise Rules, the restriction of taking the credit within six months of the issue of the duty paying documents must necessarily relate to taking the credit of duty element in part II of RG 23A. In fact as rightly contended by Sh.

K.K. Goel, SDR for the Revenue, the entry in both the parts should be made simultaneously. Since taking of credit on the strength of modvatable document is a single whole operation and it cannot be split into stages. The Ld. Consultant for the appellants relied on the following case laws, but as could be seen, each one is on altogether different issue and does not assist the case of the appellants: Antarctic Industries Ltd. v. CCE Chandigarh : In this case, the credit was not immediately recorded in RG 23 Part I register after receipt of inputs, but was recorded in Form IV register. It is held that modvat credit on these facts was admissible. Besides, at the material time, there was no provision for taking the credit within six months. The credit in this case however was taken after four months 11 days. Hence the credit was held to be admissible.

ii) Demosha Chemical Ltd. v. CCE Surat The credit was taken in RG-23 Part II account in respect of the inputs but the inputs were not accounted for. Taking note of the fact that utilisation of such inputs in the manufacture of final product was not disputed, the credit was held to be admissible. Sapa Electricals P. Ltd. v. CCE Allahabad In this case the entry in RG 23 Part 1 was not made due to oversight. This lapse was detected by the assessee himself and reported to the department. It was considered to be a minor technical lapse and the credit was allowed. In this case there is no ground relating to taking of the credit after six months.

4. In view of the above detailed discussions since the modvat credit is taken in Part 11 of the R.G. 23A after six months, the same is not admissible. Consequently the appeal fails and the same is rejected.

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