

Commissioner of Central Excise, Vs. M/S. Punjab Hammers (P) Ltd.

Commissioner of Central Excise, Vs. M/S. Punjab Hammers (P) Ltd.

SooperKanoon Citation : sooperkanoon.com/20170

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-29-2000

Judge : S Kang

Appellant : Commissioner of Central Excise,

Respondent : M/S. Punjab Hammers (P) Ltd.

Judgement :

1. M.s.Punjab Hammers Pvt. Ltd. are engaged in the manufacture of Rough Forged Products and were availing the benefit of MODVAT credit on the inputs used in or in relation to their final product. A show cause notice was issued to M/s. Punjab Hammers Pvt. Ltd. for denial of MODVAT credit on the ground that the Gate passes endorsed after 1.4.94 were not valid duty paying documents in view of the Notification No.16/94-CE(N.T.) dated 30.3.94. The adjudicating confirmed the demand.

M/s. Punjab Hammers Pvt. Ltd. filed an appeal and the same was allowed by the commissioner (Appeals). Revenue filed the appeal before the Tribunal and the Tribunal after relying upon the decision of Moosa Haji Patrawala Pvt. Ltd. Vs. Commissioner of Central Excise, reported in 1996, (83) E.L.T. 620 (Tribunal) dismissed the appeal filed by the Revenue.

2. The Revenue filed Reference application for referring the question of law to the Hon'ble High Court.

3. The MODVAT Scheme was first introduced in March, 1986 vide incorporation of Rules 57A to 57J in the Central Excise Rules, 1944 to permit availment of credit of duty paid on excisable goods used as inputs in the manufacture of final products. Rule 57G prescribed the procedure to be observed by the manufacturer intending to take such credit. The proviso to Sub-Rule (2) read as follows: "Provided that no credit shall be taken unless the inputs are received in the factory under the cover of an invoice, issued under rule 52A, and AR-I, or triplicate copy of a Bill of Entry or any other document as may be prescribed by the Central Government by notification in the Official Gazette in this behalf evidencing the payment of duty on such inputs." 4. The proviso was amended from time to time but the authority vested in the Central Government to prescribe any document evidencing the payment of duty on inputs was not amended. The Ministry from time to time issued certain instructions prescribing certain documents under this Proviso. On 1.3.1994 vide Notification No..4/94-CE (N.T.), the proviso was amended, stipulating that such prescription by Central Government should be by Notification in the Official Gazette.

Notification No.16/94-CE (N.T.) dated 30.3.1994 was, therefore, issued enumerating the documents prescribed as original documents and referring file number and the date of the order under which the various documents were initially prescribed to be original documents. The Notification and the two entries of the Table which are relevant are reproduced below: "In exercise of the powers conferred by Rule 57G of the Central Government hereby prescribes the documents specified in column (3) of the Table hereto annexed and issued under the authority of Central Board of Excise & Customs or the Central Excise Rules, 1944 specified in the corresponding entry in column (2) of the said Table for the purpose of the said rule: Provided that the documents have been issued before 1.4.1994 and the credit under the said Rule has been taken on or before 30.6.1994."Sl. No. Authority of CBEC or Documents the Central Excise1.

2.

3.-----1 to 9. xxxxxxxx
xxxxxxxx10. (i) F.No.263/26/88-CX.8 Endorsed Gate passes dt. 23rd Jan., 1989

subsidiary Gate passes/ Certificate.12.

Rule 52A as it stood Gate pass issued under Rule before 1st April, 1994 Rule 52A, as it stood before 1st April, 1994.13.

XXXXXXXXXX XXXXXXXXXXXX-----

5. The proviso to the Notification states that the authorised documents enumerated in the Table thereunder had to be issued before 1.4.1994. No Gate passes could be issued after this date since the very institution ceased to exist with effect from 1.4.1994 in view of the amendment of Rule 52A.6. The facility of endorsing Gate pass co-existed with Gate pass.

Therefore, the endorsed Gate pass in order to derive benefit of this Notification should also have been issued or were endorsed before 1.4.1994.

7. In a large number of judgements the manner and method of interpretation of taxing statute is to be interpreted strictly and literally. The strict construction of notification is that, in order to become legible documents, the endorsed Gate passes must have been endorsed prior to the date 1.4.1994. It would, therefore, appeal the under this Notification a Gate pass issued prior to 1.4.1994 but endorsed after this date would cease to become eligible document.

8. I am satisfied that a question of law dies arise out of the order of the Tribunal which is required to be referred to the Hon'ble High Court. The question of law is framed as under: "Whether Gate passes issued prior to 1.4.1994 but endorsed after that date would fall under the coverage of entry No. 10 in the Table to the Notification NO.16/94-CE(N.T.) dated 30.3.1994 and would consequently become eligible for taking credit under the MODVAT Scheme?".

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com