

Commissioner of C. Ex. Vs. Devi Enterprises

Commissioner of C. Ex. Vs. Devi Enterprises

SooperKanoon Citation : sooperkanoon.com/20678

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-01-2001

Reported in : (2001)(131)ELT93Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Devi Enterprises

Judgement :

1. These three appeals filed by the Revenue have the same common points and the respondents being the same, they are being disposed of by this common order.
2. Respondents requested for disposal on the basis of the written submissions made. I have heard Smt. Reena Arya, SDR, for the Revenue.
3. The respondents were using brass copper scrap purchased from the market as inputs. Deemed Modvat credit was provided for on such inputs in terms of the Ministry's order issued under Rule 57G(2) of the Central Excise Rules, 1944. Such credit could be denied if the inputs were clearly recognisable as being non-duty paid or wholly exempted from duty or charged to Nil rate of duty. Show cause notices were issued proposing to deny the deemed credit taken. The grounds made were that the assessee had not taken reasonable steps to ensure that the inputs purchased were duty paid, and that the assessee were not in a position to ensure that the goods purchased from the open market, had suffered central excise duty or additional customs duty in terms of Board's letter F. No. 342/1/88-

TRU, dated 12-7-1990. The Asstt.

Commissioner denied the Modvat credit holding that the assessee had failed to establish that the scrap purchased by the assessee had suffered duty. The assessee then filed appeals. The Commissioner observed that the deemed credit facility was extended considering the practical difficulties in recognising market scrap as duty paid or otherwise. He observed that the onus of establishing that the goods were not duty paid vested with the department. This onus not having been discharged, he allowed the appeals of the assessee resulting into the present appeals by the Revenue before me.

4. Smt. Arya refers to the Tribunal's judgment in the case of Arun Steel Industries reported in 1995 (79) E.L.T. 646. The Tribunal in this case was dealing with machinery parts. The Tribunal observed that it has to be shown that the machinery was sold as iron and steel scrap.

The ratio of the judgment does not apply because nowhere in the proceedings, it has been claimed that what was purchased by the present respondents were machinery parts. The citation of Ma Tara Rope Works 1991 (54) E.L.T. 360 has no relevance to the issue involved in the present case. Similarly the ratio of the Supreme Court's judgment in the case of Mysore Metal Industries - 1988 (36) E.L.T. 369 (S.C.) which laid down the principle has no relevance in this case.

5. I have seen the direction of the Board reproduced in Vol. 60 of the E.L.T. at pages 30-34. The legality of the proclamation of the Board that the deemed credit on the scrap purchased from the open market was not admissible is extremely doubtful.

6. In the scheme of Modvat, the credit of duty paid could be taken on the basis of documents evidencing such payment. In the absence of such evidence, there is no credit available. This speaks of goods purchased directly from the known sources. Where the goods are purchased from the market, the scheme permits such evidence in the form of dealer's invoice. But where the commodity is like scrap which has many sources of generation then the documentation becomes impossible. The typical bhagarwala would stock old machinery parts, tools,

crockeries, cooking utensils, etc. On these goods, there may be duty or there may not be any duty depending upon the exemption available. Under the presumption that the goods would have suffered some duty, the Government allowed the deemed credit. When the Government issued this concession, it was aware that some of the goods covered thereunder may not have suffered payment of duty. Therefore, the provision was made that where the goods were clearly recognisable as non-duty paid, then the credit would be deniable. If this denial is to be exercised, then in each case the officer has to physically examine the stock received by the user and then identify the goods which would attract duty and then further segregate them into duty paid or non-duty paid. This is a basic task to be done. The Tribunal in the case of *Machine Builders v. C.C.E.* - 1996 (83) E.L.T. 576 had gone exhaustively into this issue. In this judgment, the Tribunal observed that where there was an unconditional notification, then it was safe to presume that the goods cleared thereunder were clearly recognisable as nonduty paid. In the case of conditional notification, unless it was shown that all the conditions were satisfied, it could not be said that the inputs were recognisable as non-duty paid. In paragraph 23 of the judgment, the burden for such establishment is cast on the Revenue. The averment made in the show cause notice is in the direct contradiction of this view of the Larger Bench.

7. The Government had issued the deemed credit order with the definite knowledge that in some cases unwanted benefit would also accrue because on some of the scrap duty may not have been attracted. The conscious decision of the Government cannot be modified or altered by the executive officers.

8. I find that the Commissioner had interpreted the provisions correctly. The orders sustain. These appeals are dismissed.

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