

M/S Lucas T Vs. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-02-2001

Reported in : (2001)(77)ECC268

Appellant : M/S Lucas T

Respondent : Ltd.

Judgement :

1. This appeal arises from the impugned order in original No. 51/96 dated 30.10.96 by which the Commissioner has confirmed duty demand of Rs 6,65,736/- on the allegation of irregularly availing Modvat Credit under rule 571 (i) & (ii) of the CE Rules, read with Section 11A (1) of the CE Act, 1944. The amount has been already debited in RG 23A Part II on different dates towards the demand. The Commissioner has imposed penalty of the like sum under Rule 173. Although there was admission in the statements at the time of investigation, the appellants had taken various legal pleas with regard to availment of Modvat Credit by the appellants, and although the legal pleas raised were justified in taking Modvat Credit, in respect of the CVD paid on the shortages, the show cause notice has been confirmed on the ground that no credit can be availed on duty paid on shortages. The facts are not disputed. But the appellants had taken legal contention that once CVD had been paid in terms of the invoice number and on the quantity of goods supplied and noted in the various documents irrespective of the shortages which were there and the CVD having been paid, there was no irregularity in taking Modvat Credit. Their plea was that there cannot be two views

on this matter and a different view expressed by the department is not correct in terms of Modvat Rules.

2. The learned Counsel submits that the pleas raised by them had been record (sic) para 12, but no finding have been given only a very cryptic finding has been given in para 13 of the impugned order which is reproduced below: "I have gone through the facts of the case and the defence submission, oral and written. They availed Modvat on goods short received from their collaborators abroad. Credit was also availed on goods which were found to be defective and not used in the manufacture of final products. Similarly, they availed credit in respect of goods replaced under warranty and after sales service and which were not actually used in the manufacture of the finished goods. They did not expunge credit in respect of goods sent to the job workers and which were not received back. LTVS have admitted the lapses and paid the demand wrongly availed as Modvat Credit is proved. I find that these facts were suppressed from the department and hence proviso to Section 11A(1) would be applicable to the case" He further submitted that there was no case for imposition of penalty as there was no provision for imposition of penalty to the equal extent of duty and also as there was no deliberate intention to take irregular modvat Credit as they had paid CVD on the entire amount and the entire quantity shown in the documents. The facts are not in dispute, but the point is that the Commissioner has not adverted to all the legal pleas raised by them and hence the order is not a speaking order. He, therefore, prays for the remand of the matter as otherwise it would have legal consequences and will affect similar appeals and on the issues pending.

3. The learned SDR submitted that the Commissioner has noted all the admissions made by the appellants and on facts there was no dispute and as such he has confirmed the duty demand raised in the show cause notice. He further submitted that no grievance can be made on imposition of penalty under Rule 173Q as the rule itself lays down that presently to an extent of three times the value of the goods, can be imposed. He further submitted that the appellants have already debited the amount by reversing the credit and they have made pre-deposit of Rs 1 lakh towards penalty and as such penalty equal to the duty amount imposed is justified.

4. In counter the learned Counsel submitted that even at the time of grant of waiver of pre-deposit of balance amount of penalty, the bench had noted that the Commissioner had not given a detailed finding on all the issues raised and therefore even at that stage, Bench had given a finding that the order was not a speaking order.

5. On a consideration of the submission made, we see lot of force in the submissions made by both the sides in this case. The Commissioner has proceeded on the basis of the admissions made and therefore the learned SDR's submission that the Commissioner's order cannot be faulted has to be taken into consideration. However, the Commissioner was duty bound to have given findings on the legal submissions raised by the appellants before him and also in the appeal memorandum. We notice the said submissions have been noted in 12 paragraphs and therefore, he should have adverted to these legal pleas since, he has not adverted to the various legal pleas raised by them in terms of law, the order cannot be said to be a speaking order. In this view of the matter, the impugned order is set aside and the matter remanded to the Commissioner for de novo consideration to decide the case on all the points raised by the appellants before him and those points can be reargued before him during the personal hearing. The Commissioner should pass a speaking order by following the principles of natural justice.

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