Batliboi Ltd. Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-30-2001

Reported in : (2001)(138)ELT1227Tri(Mum.)bai

Appellant : Batliboi Ltd.

Respondent : Commissioner of Customs and

Judgement :
1. The assessee availed of the Scheme of modvat and filed declaration, in term of Rule 57G showing description of the final products and the description of the inputs. Same inputs were declared as "other electrical" showing the Chapter hading as 85. In terms of this declaration the assessee took modvat credit and utilised the same for payment of duty on the final products. They, however, maintained detailed index cards showing the description of each items covered under this general description. The detailed description was shown in the RG-23A Part-I register also on receipt of the physical inputs.

Extract of these was also appended to the RT-12 returns filed every months. These returns were duly assessed.

2. On 13/10/1993 show cause notice was issued covering the period December, 1988 to April, 1989 alleging that modvat credit taken on the inputs was deniable in view of the inadequate declaration thereof. The show cause notice alleged mis-declaration and suppression the part of the assessee and invoked the extended period. Before the adjudicating Commissioner the assessee claimed that

suppression could not be alleged inasmuch as the RT-12 assessments were finalised. The Commissioner citing the Tribunal judgment in the case of CCE Vs. Dooran Cables 1990 (47) ELT 134 held that the monthly returns are only for arithmetical accuracy and could not support the assessee's contention. He directed reversal of modvat credit to the extent of Rs. 15,975.93. He also imposed a penalty of Rs.2,000/-. Hence the appeal.

3. I have heard Shri Vijay Khandelwal for the appellant and Shri T.D.Bodade for the Revenue. The Judgment cited does not restrict the role of the RT-12 monthly returns to the arithmetical accuracy of the returns. In fact the judgment does not give any ratio as has been held by the Commissioner. It is correct that the description as given by the assessee in the declaration was inadequate. If the department had doubt thereof, it was for the departmental officers to direct the assessee to file a more complete declaration. The assessee were maintaining details of the goods. In fact that has been made a ground for alleging suppression. At the same time the show cause notice does not take into account that the very same description was given by the in its RT-12 return also in the form of extract of RG-23A register. Thus at all times the data was available with the department in another document.

Since they were so recorded there is not doubt about the physical receipt of the inputs which had suffered duty and the utilisation thereof. Once in the face of a lacuna in the declaration also the Revenue does not raise any objection to complete assessment for a number of years. The Revenue cannot choose to allege suppression thereafter. As the record shows even if in the declaration insufficient details were given, every month more than sufficient details were given to the Revenue. The sole ground on which the show cause notice was issued alleging suppression therefore does not survive. The demand confirmed is hit by limitation.

4. The appeal therefore succeeds and is allowed. Consequential relief if any.