

Cce Vs. Crest Cables Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Hyderabad

Decided On : Sep-04-2001

Reported in : (2002)(100)LC75Tri(Hyd.)erabad

Judge : S Peeran

Appellant : Cce

Respondent : Crest Cables Ltd.

Judgement :

1. This is a Revenue appeal against Order-in-Appeal No. 257/2000 (H-I) CE, dated 12.12.2000 by which the Commissioner (Appeals) found that the assessee has rightly taken the credit within 6 months in terms of Rule 57G(2) and hence there is no violation and on that ground set aside the order of the Assistant Commissioner. Aggrieved with this order, the Revenue has come up in alongwith stay application seeking stay of operation of the impugned order. The findings recorded by the Commissioner in paras 5 & 6 is reproduced wherein below: As regards invoice No. 13324 dated 9.2.1996, the modvat credit of Rs. 43,284/- has been disallowed by the Assistant Commissioner on the ground that the same was taken by the appellants on 15.9.1996 i.e., after a period of more than six months and hence, as per proviso to Rule 57G(2) of the Central Excise Rules, 1944, the appellants are not eligible to take credit after six months from the date of issue of the invoice. The appellants contended that the supplier by oversight mentioned in the invoice their Registered Office address instead of factory address where the inputs have actually been received by them on 11.3.1996 as will be evident from RG 23A Part I

entry. However, they sent back the invoice to the supplier M/s. National Aluminium Co. Ltd., (a Central Government undertaking) with a request to modify the address which was sent back to them on 14.9.1996 with a covering note that the appellants can avail the credit on the basis of the actual receipt of the material in the factory even though the invoice is addressed to the Registered Office. Because of the delay in receiving the excise invoice, the appellants contended that they could not avail the credit within six months. From the perusal of the case records, I find that the stock credit was taken by the appellants on the impugned invoice on 11.3.1996 in RG 23A Part-I. However, the money credit could not be taken by them in RG-23A Part-I register on the ground indicated above. Since the stock credit was taken by the appellants well within six months from the date of invoice, the denial of the modvat credit on the ground that the same was taken after six months is not justified in the facts and circumstances of the case. Hence, I held that the modvat credit of Rs. 43,284/- on invoice No. 13324, dated 9.2.1996 is admissible to the appellants, if otherwise in order.

As regards the invoice No. 417, dated 14.10.1996, the modvat credit of Rs. 1,200/- has been disallowed on the ground that the Chlorinated Paraffin has been shown as falling under Chapter sub heading No. 2903.90 in the said invoice whereas under Rule 57G declaration, the input declared was Chlorinated Paraffin Wax falling under Chapter sub heading 3812.00. I find there is slight variation in the description of the goods as shown in the invoice and the modvat declaration although the classification has been differently shown i.e., 2903.90 in the invoice and 3812.00 in the modvat declaration. This is a minor technical mistake on the basis of which the substantive benefit of modvat credit cannot be denied to the appellants particularly when the receipt of the inputs, its duty paid nature, its eligibility to the modvat credit and its use in the manufacture of the finished product etc., have not been questioned by the lower authorities. Hence, I hold that the modvat credit of Rs. 1,200/- is not deniable to the appellants on invoice No. 417, dated 14.10.1996, if otherwise in order.

(iii) As regards invoice No. 75, dated 12.10.1996, I find that the modvat credit of Rs. 428/- has been disallowed to the appellants as they have not filed the modvat declaration for the Calcium Carbonate Activated falling under Chapter sub heading

No. 3823.00 covered by the said invoice. The appellants have accepted that they have not filed the declaration for the said item. Filing of the modvat declaration is a mandatory requirement as per Rule 57G of the Central Excise Rules, 1944. In the absence of the same, modvat credit of Rs. 428/- is not admissible to the appellants on invoice No. 75, dated 12.10.1996.

The impugned order passed by the Assistant Commissioner is modified to the extent indicated above. The appeal is disposed of in the above terms with consequential relief to the appellants.

2. Ld. DR Shri Soundararajan submits that in terms of Rule 57G(2), the assessee is required to take credit within the time limit of 6 months prescribed in Sub proviso to Sub-rule 2 of Rule 57G. The document was received by them beyond 6 months and hence automatically it becomes invalid. Therefore, he seeks for stay of the operation of the order and also for setting aside the order impugned.

3. Ld. Counsel Shri K.R. Natarajan submits that there is no infirmity in the order and in an identical matter, this bench in the case of CCE, Hyderabad v. Aurobindo Pharma Ltd. has upheld the assessee's contention and submits that the judgment squarely applies to the facts of this case.

4. As the matter lies in a short compass, I take up both the stay and appeal together for disposal as per law.

5. On a careful consideration of the submission, I notice that there is no infirmity in the order as the order is in keeping with the judgment of the Tribunal rendered in the case of CCE, Hyderabad v. Aurobindo Pharma Ltd. and the findings recorded by the Tribunal in paras 2 to 4 is reproduced below: 2. We have heard Sri. S. Kannan, learned DR for the Revenue, who reiterated the grounds of appeal and submitted that the respondents had taken the Modvat credit on ineligible document and when it was pointed out, they reversed the credit and thereafter they took more than six months to obtain the eligible copy of Bill of Entry from the concerned Customs House. This credit, therefore, which was taken on the receipt of the ineligible copy of the bill of entry after a period of six months of the receipt of goods and payment of the duty would not be eligible as held by the lower

authorities.

3. Heard Sri. C.T. Krishnamurthy, learned advocate for the respondents, who submits that when the defect was pointed out by the audit party, they had reversed an amount which should be Rs. 2,31,952/- and not the amount as mentioned in the Revenue appeal.

After reversing this amount, the respondent, took all steps to obtain the prescribed copy of the relevant document i.e. Bill of Entry from the Customs House where the import was made and this took them time. Finally, they obtained the relevant document and took the credit which has been now objected on the ground that credit has been taken after the period of six months, which is not permissible under Rule 57G. He submits that the delay, if any, has taken place in obtaining the prescribed copy of the document and was beyond the control of the respondents, the credit has been taken on the date on which the goods has been received i.e. well within the period of six months form the date of payment of duty and/or date of issue the document i.e. Bill of Entry in this case. The credit was taken in R.G. 23A. Part I and also Part II and was reversed on the instructions of the Audit team of the Revenue Department. As regards the credit of quantity, however, the goods were utilised for the manufacture of the declared final product; He therefore, submits that the Revenue appeal has no merit and should be dismissed.

4. On a careful consideration of the submissions and material on record, we find that- 4. On a careful consideration of the submissions and material on record, we find that- (a) The credit has been taken initially on 23.6.1996 and 14.12.1996 and thereafter it was reversed on 31.12.1996 and 18.2.1997 in the other case. Thereafter, they took up the matter with the concerned Custom House and obtained the relevant documents i. e. Bill of Entry to take the credit which could be obtained by them only on 14.2.1997 and other on 13.3.1997. We find that the credit only of duty which was originally taken at the time of receipt of the goods was reversed by the respondents on being objected to by the audit officers and corrective measures were taken by them and this delay in obtaining copies of the documents i.e. Bill of Entry in this case was contributed by the department also. The credit taken originally was well within the period of six months from the date of

issue of the document. It was only that the amounts of duty credit taken were promptly reversed and thereafter they are entitled to take the same when the correct document has been received. We cannot find correction accounting error or mistake to be taking of the credit if the entry for making of credit taking is more than six months. We do not find any bar in the Rules providing for such a delay to prohibit availment of Modvat credit. What prohibits is starting of taking credit after six months of the date of issue of the documents on which the goods said to have been received in the factory and not the process of taking credit. Taking of credit starts with receipt of goods and if the receipt of goods in the factory have been effected within six months period, if credit in part one register taken and part two has not been taken for some reason these credit entries are not completed within a period of six months and it takes more than six months, we cannot find any reason to bring any bar in Rules as envisaged in the present appeal.

6. I also notice that the facts in the present case is identical with the facts of the above noted judgment of the Tribunal. The same squarely applies to the present case and hence the bench has to uphold the impugned order. Thus there is no merit in this appeal and hence the appeal along with stay is rejected. Ordered accordingly.

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