

A.B. Tools Limited Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-14-2002

Reported in : (2002)(141)ELT472TriDel

Judge : P Bajaj, B T K.K.

Appellant : A.B. Tools Limited

Respondent : Commissioner of Central Excise,

Judgement :

1. The appellants manufacture steel ingots falling under sub-heading 7206.90. They are also availing Modvat credit on Iron and Steel scrap purchased from the market. On 17-12-90 their premises were visited by the Anti Evasion Officers of Central Excise. On conducting the search of their factory premises, they recovered 34 nos. Central Excise Gate Passes for iron and steel scrap endorsed in their favour by the three firms namely M/s. Balwinder Steel Corporation, M/s. Sonu Iron Store and M/s. Dee Kay Steel Corporation, all of Mandi Gobindgarh. On verification, the said G.Ps were found to be fictitious and the firms issuing them were also found to be non-existent. During the visit, the authorised representative of the appellant, Shri Vijay Sachdev in his statement dated 18-12-90 deposed that all the aforesaid three firms were being managed by one Shri Ashish Gupta alias Bittu. The Statements were recorded from Shri Ashish Gupta on 24-1-91, 25-1-91 and 29-1-91.

In his statements, Shri Ashish Gupta admitted to have issued fictitious gate passes to the noticees under which no material was supplied by him. Accordingly, the proceedings were initiated against the appellants which culminated in the Addl. Commissioner of Central Excise, Chandigarh passing an order dated 17-3-99 in which he confirmed the demand of Rs. 18,09,334.13 against the appellant under Rule 57-1 read with Section 11A. He also imposed a penalty of Rs. 4 lakhs on the appellant under Rule 173Q(1)(bb) of the Central Excise Rules, 1944. He further imposed penalties of Rs. 1.5 lakhs each on S/Shri Vijay Sachdev and Ashish Gupta under Rule 209A.2. M/s. A.B. Tools Ltd. filed an appeal against the above order of the Addl. Commissioner, but the same is rejected by Commissioner (Appeals), Chandigarh vide his Order dated 4-5-2001.

3. We have considered the submissions made by Shri J.S. Agarwal, Advocate for the appellants and Shri Atul Saxena, JDR, for the respondents. The Id. Counsel for the appellants refers to the part of the Order-in-Original under the heading 'Discussions and Findings', in which the adjudicating authority has observed that the question for determination before him is whether or not the appellants during the period from 23-8-88 to 31-1-91 had availed Modvat credit of the aforesaid amount on the strength of duty paying modvatable documents which are not accompanied by the duty paid iron and steel scrap of the same description as mentioned in the said documents but had actually been accompanied by non-duty paid iron and steel scrap. The Id. Counsel argues that the appellants had indeed received quantity of the iron and steel scrap under the gate passes as mentioned therein on the strength of which, they had availed the Modvat credit. It is contended that it is not the case of the Department that no input material was received by the party. It is stated that the appellants had no means to know as to whether the iron and steel scrap received by them was duty paid or not. A further plea is raised that during the relevant period even deemed Modvat credit was admissible on the iron and steel scrap. We have considered these submissions. It is observed that the appellants are not disputing that the iron and steel scrap stated to have been received by them under the cover of 34 Nos. gate passes in the name of the three firms were owned by one Shri Ashish Gupta. Shri Ashish Gupta in his various statements deposed that he had issued the fictitious G.Ps under which no material was supplied by him. If the G.Ps are fictitious and the

firms in the names of which they are issued are nonexistent, the appellants certainly would have known this. There is also reference to detailed evidence and discussion in the order of the original authority on the conclusion of which, the demand of duty is confirmed on the appellants. This being the stay petition of the appeal, the detailed discussion on whole of the evidence cannot be gone into at this stage. Suffice it to say that on the basis of the available evidence the appellants have not made out a prima facie case in their favour. The appellants have also filed a copy of their profit and loss account for the financial year ending 31-3-2001 in which a loss of more than Rs. 21 lakhs is reflected. However, it is also seen from this account that the sale effected by the appellants during this period is to the tune of Rs. 1,77,49,701.00. In view of these facts, therefore, we direct the appellants to make a pre-deposit of Rs. 8 lakhs (Rupees eight lakhs only) as part of the duty confirmed on them on or before 15-3-2002. On making such deposit, the balance amounts of duty and penalty confirmed on them shall stand waived and its realization stayed till the disposal of the appeal. The matter will be called for reporting compliance on 21-3-2002.

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