

C.C.E. Vs. J.K. Textiles

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-29-2002

Reported in : (2002)(80)ECC331

Judge : B T K.K.

Appellant : C.C.E.

Respondent : J.K. Textiles

Judgement :

1. This is a revenue appeal against the Order dated 15.6.2001 passed by the Commissioner (Appeals), Jaipur. The Commissioner (Appeals) has allowed the modvat credit to the respondents as per the particulars given below: Modvat credit of Rs. 1,56,959 was taken by the appellant vide RG 23A Pt. II Entry No. 226 dated 27.6.93 on the strength of an endorsed exbond Bill of Entry.

Modvat credit of Rs. 82,350 availed vide RG 23A Pt. II Entry No. 238 dated 6.7.93 on the strength of gate pass No. 659 dated 30.6.93 which was not endorsed in favour of the assessee.

The CEGAT vide its Final Order No. A/215/01-NB(SM) dated 2.2.2001 in the case of CCE, Jaipur v. Dugar Tetenal (I) Ltd. has settled the issue and has allowed the benefit of modvat credit in respect of endorsed Bill of Entry other than High Sea Sales. Following the ratio of the Tribunal's decision, benefit of modvat credit on the endorsed exbond bill of entry is allowed to the appellant.

Regarding (ii) issue, the appellants, in their appeal, have argued that the credit could be permissible even if the duty paying documents accompanying the goods are not in favour of the assessee-manufacturer. They also referred to the decision of Tribunal in the case of Larsen & Toubro Ltd. v. CCE, Bhubaneswar and CEGAT Bench of Bombay's decision 2. The observation of the Commissioner (Appeals) in his order in allowing the modvat credit on the aforesaid documents is extracted below: I have gone through the case records. I find that the gate pass was in the name of M/s. J.K. Synthetics Ltd. (ATC Group), Kota and the same was not endorsed in favour of the appellants. On perusal of show cause notice and Order-in-Original, it reveals that there are plethora of decisions wherein it has been held that modvat credit cannot be denied only on the technical ground. As J.K. Synthetics Ltd., Kota and J.K. Textiles, Jhalawar are two units of the same company of the appellants, disallowance of modvat credit on a mere technical ground is not correct. Moreover, the mistake is remediable. Ratio of decision of Hon'ble Tribunal in the case of Larsen Toubro Ltd. & v. CCE, Bhubaneswar, is also very much applicable in this instant case. Following the ratio of the Tribunal, modvat credit on the endorsed gate pass is allowed.

3. I have heard Shri H.C. Sharma, JDR for the appellants. The respondents are not represented and the notice of hearing sent to them is returned by the postal authorities undelivered. In the revenue appeal, it is contended that the Bill of Entry in question was originally in the name of M/s. J.K. Synthetics Ltd., Kota for exbonding the imported goods from Customs Bonded Warehouse, Kota whereas the Bill of Entry was endorsed by M/s. J.K. Synthetics Ltd., Kota in favour of M/s. J.K. Textiles, Prithvipura, Jhalawar. It is contended that the said endorsed exbond Bill of Entry has not been recognised as proper duty paying document in terms of Rule 57G for availment of modvat credit. It is however, stated that the endorsed Bill of Entry in case of High Sea Sale only is recognised as duty paying document for availment of modvat credit. With regard to the Gate Pass No. 659 dated 30.6.93 of M/s. GSFC Ltd. in the name of M/s. J.K. Synthetics Ltd. (ATC), Kota, the same has not been endorsed in favour of M/s. J.K. Textiles, Jhalawar. Therefore, it is not acceptable as a proper document for availment of modvat credit in terms of Rule 57G. It is observed that both the aforementioned documents are in the name of same company viz., M/s. J.K. Synthetics Ltd. The only deficiency

found, is that neither it is in the name of the party nor endorsed in their favour, whereas the modvat credit is availed by their unit at Jhalawar.

Since there is no other discrepancy found either in the documents or the goods received on the strength of these documents, this could only be considered as a procedural discrepancy which would not warrant for the denial of the substantive right of the party to the modvat credit under these documents. In this view of the matter, there is no infirmity found in the impugned order of Commissioner (Appeals). The Appeal therefore has no merit and the same is accordingly dismissed.

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