

Clutch Auto Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-20-2002

Reported in : (2002)(103)LC416Tri(Delhi)

Judge : P Chacko

Appellant : Clutch Auto Ltd.

Respondent : Cce

Judgement :

1. In this appeal, the appellants are aggrieved by denial of Modvat credit of Rs. 1,91,184/- on diesel Power Generating set [in short, DG set] under Rule 57Q of the Central Excise Rules 1944 on the ground that the substantive conditions under Rule 57R read with Notification No.27/94-CE(NT) dated 17.6.1994 were not fulfilled.

3. The DG set under reference was procured by the appellants from M/s.

TIL Ltd., Pondicherry under a higher (sic) purchase agreement with a financial company viz. M/s. PNB Capital Services Ltd. The item was procured under invoice dated 31.3.1996 issued by M/s. TIL Ltd. and installed in the appellant's factory on 30.4.1996. The credit of duty paid on the DG set was taken by the appellants on 13.5.1996. the department, by show-cause notice, proposed to disallow the credit, alleging that the credit was taken in contravention of the provisions of Notification No. 27/94-CE(NT) ibid and further proposed to impose penalty on the appellants

as also to levy interest under Rule 57U. The proposals were contested. The adjudicating authority disallowed the credit and ordered recovery thereof, demanded interest on the duty amount from 1.5.1996 till the date of payment and imposed a penalty equal to duty on the party under Rules 57U(6) and 173Q(1)(bb). In the appeal preferred by the assessee against the order of adjudication, the Commissioner (Appeals) upheld the decision of the lower authority on merits but reduced the quantum of penalty to Rs. 50,000/-. The order of the Commissioner (Appeals) is under challenge in the present appeal.

4. Ld. advocate Sh. D.K. Tyagi refers to the provisions of the notification and submits that all the mandatory conditions were duly complied with by the assessee for availing the Modvat credit in question. Referring to the first condition, the counsel submits that the assessee had filed proper declaration under Rule 57T in the prescribed pro forma. He submits that the prescribed proforma at the relevant time did not require it to be declared that the appellants were the absolute owners of the capital goods in question and had not acquired the same under higher (sic) purchase agreement. Whatever declaration was required in the prescribed proforma in vogue at the material time was duly given and, therefore, there was no reason to allege that condition No. (i) in the notification had not been fulfilled. Counsel submits that Condition No. (ii) was not applicable to the appellants. As regards Condition No. (iii), he submits that the factum of compliance with that condition has been accepted. Referring to Condition No. (iv), Id. counsel submits that the said condition was also fulfilled by the assessee by way of production of appropriate certificates. The certificate issued by M/s. PNB Capital Services Ltd. and produced before the adjudicating authority had certified, inter alia, that M/s. PNB Capital Services Ltd. (Financial Copmpany) had not claimed depreciation on the DG set under higher (sic) purchase.

Similarly, the certificate from the appellant's Chartered Accountant, which was also produced before the adjudicating authority, had certified that the company had not claimed any depreciation on the duty element of the value of the DG sets under the Income Tax Act. These two certificates fulfilled Condition No. (iv), but the same was not appreciated by the authorities, submits the counsel. Condition No. (v), next referred to by the counsel, only deals with the general procedure of availment

of Modvat credit on capital goods under the Central Excise Rules. Counsel submits that there is no dispute on this score.

Referring to the fourth and the last condition in the Notification, counsel concedes that the invoice issued by M/s. TIL Ltd., in fact, did not bear the name of the financial company though it was required for the purpose of availment of the Modvat credit under the Notification.

According to counsel, this was a minor lapse or a curable defect. The defect has since been cured by the assessee by producing a certificate from M/s. TIL Ltd., which certified that the DG set was financed by M/s. PNB Capital Services Ltd. under higher (sic) purchase agreement with the appellants and further that the name of the financial company had been omitted to be mentioned in the invoice at the time of supply of the goods. M/s. TIL Ltd., in that certificate, pleaded that the name of M/s. PNB Capital Services Ltd., be treated to have been mentioned in the invoice. Ld. counsel submits that the departmental authorities ought not to have denied the substantive benefit of Modvat credit on the ground of non-mention of the financial company's name in the invoice. Ld. counsel, finally, urges for holding that the requirements of the Notification were substantially complied with by the appellants so as to be entitled to take the credit on the DG sets on the strength of the invoice under reference.

5. Ld. JDR Sh. B.C. Mahey opposes the above prayer and, after reiterating the findings of the adjudicating and first appellate authorities, submits that all the conditions laid down in the Notification were of a mandatory nature which required to be fulfilled for availment of the Modvat credit. He submits that, admittedly, the name of the financial company had not been mentioned in the invoice issued by M/s. TIL Ltd. and, thereby, Condition No. (vi) remained unfulfilled. The denial of the Modvat credit on the ground of non-fulfilment of mandatory conditions has to be upheld, pleads the DR.6. I have examined the submissions. I find that only 3 conditions out of the 6 conditions laid down under Notification 27/94 are relevant for the present case as there is no dispute in relation to the other 3 conditions. These conditions are Nos. (i), (iv) and (vi). Condition No.(1) requires a declaration to be filed before the Assistant Commissioner under Rule 57T. It is not in dispute

that a declaration had been filed by the appellants. The only question is whether that declaration satisfied the requirements of Rule 57T. The prescribed proforma for such declaration, which was in vogue at the material time, has been shown to me by the counsel. This proforma appears to be the revised proforma for the declaring to be filed under Rule 57T after the issue of Notification No. 27/94-CE(NT). Counsel has also produced a copy of the pre-revised proforma for declaration which was in force upto the date (17.6.1994) of issue of the Notification. On a perusal of these documents, I find that the requirement, in the pre-revised proforma, of a declaration to the effect that the declarant was the absolute owner of the capital goods and had not acquired the same under lease/hire-purchase /loan or any other mode was done away with in the revised proforma brought into use on 17.6.1994. Nevertheless, the declaration was given by the appellants in the pre-revised proforma, wherein they declared that they were absolute owners of the capital goods etc. Counsel has submitted, in this connection, that such a declaration of absolute ownership of capital goods happened to be made inadvertently due to mistaken use of proforma and further that, in the absence of requirement of any such declaration in the revised proforma, the said declaration was of no significance insofar as Condition No.(i) of the Notification was concerned. I have to accept this argument.

I find that the appellants had filed declaration as required under Rule 57T and fulfilled condition No. (i) of the Notification. As regards Condition No. (iv), I observe that the certificate of the financial company and that of the appellant's Chartered Accountant regarding depreciation of value of the capital goods were available to the lower appellate authority, but that authority appears to have overlooked the relevant part of the financial company's certificate. In their certificate, the financial company had certified that they had not claimed depreciation on the DG set which was procured by the appellants under higher (sic) purchase. I find that these two certificates fulfilled Condition No. (iv) which required that the manufacturer and the financial company should not claim depreciation under the Income Tax laws on that part of the value of the capital goods which represented the amount of specified duty paid on the goods. Coming to the last condition, I note that it is not in dispute that the invoice issued by TIL Ltd. to the appellants did not bear the name of the financial company. The authorities below have taken serious note of

the non-mention of the financial company's name in the invoice and have treated the same as a case of non-fulfilment of a mandatory condition.

The appellants' counsel has shown to me today a certificate by M/s. TIL Ltd., which states that the name of the financial company was omitted to be mentioned in the invoice at the time of supply of the DG sets.

But this document was not available to any of the lower authorities, nor has this document been brought on record of the present appeal in accordance with law. Perhaps, if this document had been produced before the lower authorities, those authorities would not have recorded a finding of non-fulfilment of Condition No. (vi). Ld. counsel has argued that Condition No. ((vi) is not mandatoiy and denial of Modvat credit on the ground of its non-fulfilment cannot be sustained. 1 am not able to persuade myself to accept the contention that some of these conditions are mandatory and some are not. I would concur with the authorities below that all the six conditions are equally mandatory.

However, Condition Nos. (i), (iv) and (vi) only are relevant for this case as already noted. I have also found that Condition Nos. (i) and (iv) stand fulfilled. As regards Condition No. (vi), I am inclined to send the matter back to the adjudicating authority, which should examine the matter in accordance with law and the principles of natural justice, bearing in mind that the non-mention of the financial company's name in the invoice is a curable defect.

7. In the result, I set aside the orders of the lower authorities and allow this appeal by way of remand, directing the adjudicating authority to settle the dispute in relation to Condition No. (vi) in the aforesaid manner.

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