

Asco (i) Ltd. Vs. Commissioner of Central Excise

Asco (i) Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/28012

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Apr-11-2002

Reported in : (2002)(82)ECC350

Judge : K Bhatia

Appellant : Asco (i) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants manufacture Solenoid valves falling under Chapter Heading 84 of the Central Excise Tariff Act, 1985. They are also availing Modvat Credit on raw materials/components under Rule 57A of the Central Excise Rules, 1944. On a surprise visit to their unit by the officers of the Headquarters Preventive of the Commissionerate and further verification of the records, it was noticed that during the financial years 1994-95 to 1998-99 they had shown shortages of raw materials/components in the balance sheets to the tune of Rs. 13,36,134 and had written off of this amount from their books of accounts. These shortages, however, were neither accounted for in the Central Excise Registers nor the proportionate amount of Modvat credit had been expunged from the Modvat credit records. These facts were also not intimated to the department. It therefore, appeared to the departmental authorities that the assessee had availed Modvat credit on raw materials/components which were found short and were not utilised in the manner specified under the Modvat Rules and suppressed this fact from the department. Accordingly, the Joint Commissioner (Preventive) of Central Excise

Commissionerate, Chennai-III issued them a show cause notice dt. 14.9.1999 in which it was alleged that they had contravened the provisions of Rule 57F(1) read with Rule 57A of the Central Excise Rules, 1944. They were therefore called upon to show cause why the duty of Rs. 1,95,588 involved on the inputs which had been reflected in the balance sheets as shortages for the years 1994-95 to 1998-99 should not be demanded from them by invoking the extended period for demand under Rule 57I(ii), 57I(iii) and Rules 57I(4). They were further called upon to show cause why a penalty should not be imposed on them under Rule 57I(4) and Rule 173Q ibid. They were also called upon to show cause why the interest should not be charged from them under Section 11AB of Central Excise Act, 1944 read with Rule 57I(5) of Central Excise Rules, 1944. The party in their reply to the show cause notice and during course of the personal hearing pleaded before the Joint Commissioner of Central Excise (Preventive) that the Department is ignoring the commercial/business realities; that they manufacture Solenoid valves which contain over 1000 small components and these are stored in bins and some of them may get slightly mixed during the course of manufacture; that they were consistently determining the price of the shortages and had writing it off in the balance sheets as per normal accounting practice and there was no clandestine removal of the raw materials/components. They strongly denied the allegations of suppression and submitted that they have been filing the balance sheets every year to the department and, therefore, the larger period of limitation cannot be invoked in their case. They also contended that there was no deliberate and wilful violation of the provisions of the concerned rules. Therefore, there was no warrant to impose penalty on them. The Joint Commissioner of Central Excise (Preventive), however, vide his order dt. 27.12.99 confirmed the duty of Rs. 1,95,588 on the appellants under Rules 57I(1)(ii) and 57I(1) (iii) read with the proviso to Section 11A(I) of the Central Excise Act, 1944. He further imposed penalty of Rs. 1,37,168 on the party under Rule 57I(4) and a penalty of Rs. 5000 under Rule 173Q. He also ordered for charging the interest as per provisions of Rule 57I(5) and Section 11AB of the Central Excise Act, 1944.

2. The assessee filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide his order dt. 27.12.2000 reduced the penalty imposed on them under Rule 173Q to Rs. 1000. He otherwise rejected their

appeal upholding the order passed by the original authority.

3. This is an appeal against the impugned order of the Commissioner (Appeals). I have heard Ms. Thenmozhi, Advocate for the appellants and Shri C. Mani, DR for the respondents.

4. I have considered the submissions made before me. The facts of the case as narrated above are not in dispute. The appellants are advancing the same arguments in their defence as those submitted before both the lower authorities. The appellants conducted annual stock taking of their raw materials/components and reflected the shortages in their annual balance sheets during the financial years 1994-95 to 1998-99.

They ascertained a total shortage of raw materials/components valued at Rs. 13,36,134 and wrote them off in their balance sheets. They had availed the Modvat credit on these inputs but the same were not used in or in relation to the manufacture of final products. These shortages though were reflected in their annual balance sheets but they were not accounted for in the Central Excise Accounts and the proportionate Modvat credit had also not been expunged. The argument of the appellants that there were about 1000 small components; that these were stored in bins and some of them may have got slightly mixed during the course of the manufacture in itself is not a defence against not expunging the credit of duty availed on such raw materials/components.

The normal and natural course of action expected on the part of the appellants as per law is that the moment they had ascertained the shortage of the raw materials/components, they should have debited the quantity and the corresponding credit of duty in the Part I Part II of their RG 23-A account. Having not done that, they have clearly violated the provisions of Rule 57A, and 57F(1). It is rightly observed by the lower appellate authority in his order that there is no provision under the Modvat Rules to condone shortage of inputs noticed.

5. The plea of the time bar of demand advanced by the appellants also cannot be countenanced in view of the fact that they did not reflect the shortages of raw materials/components found on stock taking in their RG 23 Part A account. In the

absence of such accountal, the departmental authorities would not have been any wiser about such shortage. In view of these facts, therefore, there seems to be no warrant to interfere in the finding of the lower authority. However, though, there is a violation of the provisions of Modvat Rules by the appellants, but overall shortage is only about 0.7 per cent of the total raw materials/components on which they availed the Modvat credit during the period of over 4 years. I, therefore, see no mala fide intention on the part of the party in not expunging the Modvat Credit of such a small amount. The Commissioner (Appeals) has reduced the penalty from Rs. 5000 to Rs. 1000 under Rule 173Q. But he has not recorded any findings with regard to the plea of the appellants against the imposition of penalty of Rs. 1,37,168 under Rule 57I(4). Keeping in view the over all facts in the present case, I am of the view that the appellants should not be subject to any penalty. I, therefore, set aside the penalty imposed on them. But for this modification, the appeal otherwise fails and the same is accordingly rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com