Commissioner of C. Ex., Vs. Bilt Rite Packaging (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-24-2002

Reported in : (2002)(144)ELT479TriDel

Judge : P Chacko

Appellant : Commissioner of C. Ex.,

Respondent : Bilt Rite Packaging (P) Ltd.

Judgement :

1. This appeal is by the Revenue challenging the decision of the adjudicating and first appellate authorities allowing Modvat credit on inputs to the respondents to the extent of Rs. 2,94,450/-. Out of this total credit taken by the assessee during the period November, 1993 to February, 1994, a credit of Rs. 1,51,365.02 was taken on inputs received under cover of invoices, in piecemeal, from the depot of the input-manufacturer viz. Indian Petro Chemical Corporation Ltd. (for short, IPCL). The total quantity of the inputs so received was covered by a gate pass issued by the manufacturer, which was retained with appropriate endorsements in the depot and finally delivered to the assessee along with the last lot of inputs. The credit taken on such inputs and allowed by the authorities below has been questioned by the appellant on the ground that a gate pass with more than two endorsements was not a valid duty-paying document for the purpose of availment of Mod-vat credit during the material period in terms of Board's Circular No. 22/90-CX-8, dated 9-4-90, and on the further ground that the Tribunal's decision in CCE, Meerut v. Hill Packaging Ltd. [2000 (118) E.L.T. 56] relied on by the Commissioner

(Appeals) for allowing the Modvat credit is not applicable to the case at all.

Another part of the aforesaid total credit of over Rs. 2.9 lakhs, amounting to Rs. 1,37,852,23, was the credit taken on inputs received in piecemeal by the assessee from the IPCL depot out of the balance quantity remaining under the gate pass after clearance of certain quantity from the depot to some other customer under a subsidiary gate pass. In this case also, the original gate pass with appropriate endorsements made at the various stages of piecemeal clearance of the inputs, which was retained with the depot was delivered to the assessee only along with the last lot of the inputs. Both the authorities below allowed the credit to the assessee, but the appellant has challenged the same on the ground that the entire balance quantity of inputs remaining under the GP after clearance to 3rd party under subsidiary gate pass ought to have been received in one lot by the respondents and not in piecemeal. A credit of Rs. 5,232.75 was allowed by the Commissioner (Appeals) after condoning the delay involved in the filing of declaration under Rule 57G. The appellant challenges this on a procedural ground by relying on this Tribunal's Larger Bench decision in CCE v. Avis Electronics Pvt. Ltd. 2. Heard both sides. The JDR appearing for the appellant reiterates the aforesaid grounds of the appeal. His emphasis is on the CBEC Circular insofar as the Modvat credit taken on the inputs received in piecemeal by the respondents is concerned. Ld. Counsel for the respondents submits that it has been consistently held by this Tribunal that an endorsed gate pass is a valid modvatable document for periods prior to 1-4-94. The period of dispute in this case is prior to 1-4-94. Counsel submits that there is no provision under the Central Excise Rules, 1944, which forbade availment of Modvat credit on the strength of gate pass containing endorsements made by the input-supplier more than twice in favour of the Modvat-taking manufacturer of final products. He submits that the Board's circular relied on by the appellant is at variance with the consistent view taken by this Tribunal that a gate pass endorsed two or more times was a valid modvatable document for any period prior to 1-4-94. Ld. Counsel argues that the Tribunal's decision must prevail over the Board's instructions. In this connection, he has relied on the following decisions :-CCE v. Addi Alloys (P) Ltd. [2000 (122) E.L.T. 526 (T) = 2000 (40) RLT990] Adverting to the Revenue's challenge against the grant of Modvat credit of Rs. 5,232.75, Id. Counsel submits that, though there was no declaration under

Rule 57G in respect of the inputs at the time when the credit was taken, a declaration was filed within six months from the date of receipt of the goods and the delay involved in its filing has been condoned by the Commissioner (Appeals). Counsel seeks to defend the decision of the lower appellate authority on the strength of this Tribunal's decisions in JCT Ltd. v. CCE [2001 (135) E.L.T. 80 (T) - 2001 (47) RLT 47] and Ashoka Foundry v. CCE [2001 (135) E.L.T. 929 (T) = 2001 (45) RLT 83].

3. I have examined the submissions. I find that, in regard to the Modvat credits taken on the inputs received in piecemeal from the IPCL depot, both the authorities below have concurrently held that such credit is allowable. The ground stated by the appellant is that there could be no endorsement more than twice on a gate pass covering the inputs received by the assessee. This view appears to be based on the instructions contained in the Board's Circular No. 22/90-CX. 8, dated 9-4-90. The circular, which was issued apparently to prevent the Tribunal's decision in SBS Pvt. Ltd. v. CCE, Vadodara [1990 (45) E.L.T.701] from becoming a precedent, maintained that no gate pass which had been endorsed more than twice should be used for availment of Modvat credit on the inputs covered by the document. This Tribunal's decisions in the cases of Multilayer Composites (supra), Hill Packaging (supra) etc. cited by the counsel were rendered after the issuance of the said circular. Those decisions, which held that there could be endorsements more than twice on a gate pass where under an assessee received his inputs from the manufacturer thereof is, apparently, at variance with the Board's instructions. As rightly submitted by Id. Counsel, in such a situation, this Tribunal's decision will prevail. The appellant-Revenue has pointed out that the inputs covered by an endorsed gate pass should be received in a single lot and not in piecemeal. If the entire balance quantity of inputs remaining under the gate pass had been cleared to the assessee from the IPCL depot in a single lot, there would not have been any occasion for several endorsements. Once it is held that successive endorsements would not ipso facto invalidate the gate pass for purposes of availment of Modvat credit, it is pre-supposed that piecemeal clearance of inputs under a gate pass by the input-manufacturer from his depot to the Modvat-taking manufacturer of final products was permitted in law, during the material period, i.e., prior to 1-4-94. The appellant cannot successfully resist this inevitable practice. In the instant case, the

piecemeal clearances were covered by the depot's invoices and the last lot of such clearances was also covered by the endorsed gate pass. It is not the appellant's case that the inputs so received by the respondents were not utilized for the manufacture of final products, nor is there any dispute of the duty-paid nature of the inputs. In such circumstances, the factum of receipt of the endorsed gate passes only along with the last lot of inputs received from the IPCL depot cannot be a valid ground for denial of the Modvat credit.

4. The credit of Rs. 5,232.75 was taken on certain quantity of inputs , without there being any declaration under Rule 57G at that point of time. A declaration in respect of the goods was, however, filed subsequently, within six months from the date of receipt of the goods.

The delay of declaration has been rightly condoned by the lower appellate authority. Such condonation is quite justifiable in view of the Tribunal's decision in the cases of JCT Ltd. (supra) and Ashoka Foundry (supra).

5. In view of the findings noted above, the grounds of this appeal cannot be accepted. The impugned order is sustained and the Revenue's appeal is dismissed.