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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-13-2002

Reported in : (2002)(105)LC447Tri(Delhi)

Judge : A T V.K.

Appellant : Paramount Cable Corpn.

Respondent : Cce

Judgement :

1. M/s. Paramount Cable Corporation have filed this appeal against the Order-in-Appeal No. 144-CE/DLH/2001 dated 24.12.2001 under which the Commissioner (Appeals) has confirmed the demand of Rs. 1,32,378.86 paise against them and penalty of Rs. 1 lakh imposed on them.

2. Shri Harbans Singh, learned Advocate, submitted that the Appellants manufacture electric wires & cables and avail of Modvat Credit of the duty paid on inputs: that the Additional Commissioner, under Adjudication Order No. 71/99 dated 26.2.1999 confirmed the demand and imposed penalty on the ground that the MODVAT Credit was taken by them without receipt of the inputs and only on the basis of gate passes issued by M/s. Kijriwal Enterprises and M/s. Priyanka Metals. The learned Advocate, further, submitted that the copies of the statements of Shri K.C. Kejriwal and Sunil Kejriwal were not supplied to them which tantamounts to violation of principles of natural justice; that Sanjay Aggarwal, partner of the firm retracted his statement recorded on 14.10.1993 on 15.10.1993

by a letter addressed to Collector, Central Excise in which he clearly mentioned that under duress they not only debited Modvat Credit availed against two impugned gatepasses but were also made to write that the copper wire purchased was not accompanying the gate passes. He also mentioned that the material had been received, entered in the relevant records i.e. RG-23, Part I and II and the same had been utilized in the manufacture of finished excisable goods on which duty was paid; that there is no evidence on record to rebut it.

He also contended that demand is hit by time limit since they had filed extracts of RG-23A with the Department as such there was no suppression etc.; that no penalty is imposable as there was no wrong availment of Credit as material was received and utilized by them; that in any case as they had reversed the MODVAT Credit immediately on 14.10.1993 before the issue of notice penalty provisions cannot be invoked. He relied upon the decisions in the cases of Escorts Ltd. v. CCE, Delhi 2002 (48) RLT 15 (CEGAT) and BPL Sanyo Utilities and Appliances Ltd. v. CC, Bangalore wherein it has been held that penalty is not imposable where the assessee has taken corrective steps before the issue of show cause notice.

3. Countering the arguments, Shri H.C. Verma, learned D.R., submitted that investigation revealed that both Kejriwal Enterprises and Priyanka Metals were selling the copper bars in the open market without bringing them in their factory premises and Gatepasses of copper wire were issued to parties though no goods were actually sent to enable those parties to avail Modvat Credit; that Shri Sanjay Aggarwal, partner of the Appellant, admitted having taken Modvat Credit on two gate passes issued by Kejriwal Enterprises and Priyanka Metals without receiving of copper wires; that enquiry from transporters had also revealed that copper rods were never transported to the units of Kejriwal. The learned D.R., further, submitted that subsequent retraction does not make the statement inadmissible. He relied upon the decision of the Supreme Court in the case of Surjeet Singh Chhabra v. UOI wherein it has been held that "the confession, though retracted, is an admission and binds the petitioner." He also placed reliance on the judgment in the case of Naresh Sukhwani v. UOI . He also referred to the findings of the Commissioner (Appeals) in the impugned Order to the effect that at the time of

hearing, "the learned Advocate of the appellants did not press for supply of documents and requested that the case may be decided on the basis of records."

4. I have considered the submissions of both the sides. In his statement dated 14.10.1993, Sanjay Aggarwal, partner of the Appellant, clearly deposed that though the copper wire mentioned in the GP1s and Bills were not received along with the bills and GP1s, they had wrongly availed MODVAT Credit of duty and being law abiding citizen he had voluntarily reversed the Modvat Credit in RG23A-Part II on 14.10.1993 itself. Even in his letter dated 15.10.1993 while alleging that under duress Modvat Credit was reversed, Sanjay Aggarwal has mentioned as under: The fact of the matter is that the credit was taken bona fidely without having any knowledge that the gate passes covering the goods received were not genuine in nature.

5. It is thus apparent that even in his retraction letter Sanjay Aggarwal has mentioned about non-genuineness of the gate passes on the strength of which Modvat Credit was taken by them. No evidence has been brought on record to even show that the goods in question were actually received by them under the two impugned gate passes. On the basis of material mentioned in the show cause notice and Adjudication Order, I am of the view that Revenue has proved the non-receipt of goods and availment of Credit without actual receipt of the goods. Modvat Credit is available only on receipt of goods, on which Central Excise duty has been paid, under the cover of specified duty paying documents. As receipt of goods is not there, the demand is to be upheld. The demand is also not hit by time limit as the fact of non-receipt of goods would not be reflected from extract of RG23A. I, therefore, uphold the demand of Rs. 1,32,378.86 paise. As the MODVAT Credit has been taken without receipt of inputs, a penalty is imposable on the Appellants under the law. Mere fact of reversal of Credit before issue of show cause notice will not wipe out the offence of taking the credit without receipt of goods. It has been held by the Apex Court in the case of Zunjarrao Bhikaji Nagarkar v. UOI that "It is difficult to accept the argument of the appellant that levy of penalty is discretionary. It is only amount of penalty which is discretionary." Further the Supreme Court has held in Gujarat Travancore Agency v.C.I.T. that "unless there is something in the language of the statute indicating the need to establish the element of mens rea, it is generally sufficient to prove that a default

in complying with the statute has occurred." However, the fact of reversing MODVAT Credit immediately on being pointed out by the Officers will certainly have an impact on the quantum of penalty. I, therefore, reduce the penalty from Rs. 1 lakh to Rs. 40,000/-.

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