Commissioner of C. Ex. Vs. Rubicon Steels

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-13-2002

Reported in : (2003)(161)ELT355TriDel

Judge : A T V.K.

Appellant : Commissioner of C. Ex.

Respondent : Rubicon Steels

Judgement :

1. In this Appeal filed by the Revenue, the issue involved is whether deemed credit is available to the respondents M/s. Rubicon Steels under Notification No. 58/97-Central Excise, dated 30-8-97.

2. Shri H.C. Verma, learned Departmental Representative submitted that the respondents manufacture rail coach parts and availed of the Modvat credit of duty paid on the inputs; that during the scrutiny of RT 12 returns during the period from 4/98 to 3/99, it was found that they had availed deemed Modvat credit on the strength of invoice in which it was mentioned that duty liability was to be discharged under Rule 96ZP(3) of the Central Excise Rules; that in terms of Para 4 of Notification No. 58/97, the Deputy Commissioner under Adjudication Order Nos.

286-88/99, dated 1-12-99 disallowed the Modvat credit; that on Appeal however, the Commissioner (Appeals) allowed the Appeal partly by allowing the deemed

Modvat credit in respect of the inputs where the Range Officer of the supplier had certified the payment of Central Excise duty on the inputs; that on inquiry the Central Excise Division, Mandi Govindgarh in whose jurisdiction the suppliers were falling have confirmed that M/s. Quality Steels and M/s. Guru Arjun Iron & Steel Rolling Mills and M/s. Gopal Mills have not discharged their duty liability as determined by the Commissioner Chandigarh; that as the supplier had not discharged the appropriate duty liability, the deemed Modvat credit is not admissible to the respondents.

3. On the other hand, Shri Ajay Jain, learned Advocate, submitted that Para 2 of the Notification No. 58/97 provides that duty of excise shall be deemed to have been paid on the inputs specified in the Notification and the same shall be equivalent to the amount calculated at the rate of twelve per cent, of the price and credit of deemed duty so determined shall be allowed to the manufacturer of the final product; that under this Para, the respondents are eligible to avail of deemed Modvat credit. He further submitted that no proof has been brought on record by the Revenue; that the Certificate issued by Range Superintendent regarding payment of duty was not correct. Finally he relied upon the decision in the case of CCE, Jaipur-I v. Runthala Industries [2002 (101) ECR 71 (Tri.)] wherein the Tribunal allowed the deemed credit under the Notification No. 58/97 as the duty had been paid on the goods supplied to the respondents therein. He, therefore, contended that it is not necessary that the entire duty should be paid before the deemed credit under the said Notification can be availed of.

4. I have considered the submissions of both the sides. Notification No. 58/97 provides for availment of deemed Modvat credit. Para 2 of the Notification provides that the duty of Excise shall be deemed to have been paid on the inputs and same shall be equivalent to the amount calculated at the rate of twelve per cent. of the price as declared by the manufacturer in the invoice accompanying the said inputs and the credit of the deemed duty so determined, shall be allowed to the manufacturer of the final products. The availment and utilization of the deemed credit is however, subject to the conditions contained in the Notification itself. Para 4 of the Notification provides that the provisions of this notification shall apply only on those inputs which have been received directly by the manufacturer of the final

product from the factory of the manufacturer of the said inputs under the cover of an invoice declaring that appropriate duty of Excise has been paid on such inputs under the provisions of Section 3A of the Central Excise Act. The Deputy Commissioner in the Adjudication Order has given his finding that the Revenue has contended that three suppliers of the inputs have not discharged their duty liability as determined by the Commissioner of Central Excise under Section 3A of the Central Excise Rules. It has been emphasized by the Revenue that these three suppliers have not discharged their duty liability for the relevant period as per the Annual Capacity of Production fixed by the Commissioner under the relevant Rules. While interpreting the exemption notification in the case of C.C.E., Vadodara v. Dhiren Chemical Industries [2002 (139) E.L.T. 3 (S.C.)], the Apex Court held that for the purposes of getting the benefit of exemption under the Notification, the goods must be made from material on which Excise duty has, as the matter of fact, been paid, and has been paid at the "appropriate" or correct rate. Unless the manufacturer has paid the correct amount of Excise duty, he is not entitled to the benefit of Exemption Notification. As in the present matter, the respondents have not been given a chance to rebut the verification report received from Central Excise Division, Mandi Gobindgarh, I am of the view that in the interest of justice, matter must go back to Adjudicating Authority for readjudication after ascertaining whether the appropriate duty has been paid by the three suppliers mentioned in the memo of appeal after following the principles of natural justice. The Appeal is thus allowed by way of remand.