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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-18-2002

Reported in : (2002)(84)ECC329

Judge : S T G.R., P Bajaj

Appellant : Cce

Respondent : Rockman Cycle Indus. Ltd.

Judgement :
1. This appeal has been directed by the Revenue against the impugned Order-in-Appeal dated 15.2.2001 passed by the Commissioner (Appeals) vide which he reversed the Order-in-Original of the A.C. dated 19.11.1999 and allowed the modvat credit to the respondents.

The respondents are engaged in the manufacture of moped and motor cycle chains falling under sub-heading No. 7315.00 and 7224.00 of the CETA. They took modvat credit, on the capital goods namely chain making machinery, amounting to Rs. 50,78,996 on the strength of bill of entry dated 8.12.95. On scrutiny of their RT-12 return for the year ending 31.3.96, it revealed that the modvat taken by the respondents was not admissible to them and they were served with a show cause notice accordingly. The A.C. disallowed the modvat credit on the grounds (i) credit was taken without declaration as required under Rule 57T (CER), (ii) credit was taken on the bill of entry/invoice which was not in the name of the respondents, (iii) the goods on which credit was taken could not be termed as 'capital goods' as per provisions of Rule 57Q, (iv) credit was taken on power press on 2.2.96 while declaration was filed on 23.4.96, (v) credit was taken on the original copy of the invoice which was not permissible and (vi) the credit was taken prior to the commencement of the production.

3. The Commissioner (Appeals) has reversed this order of the A.C. and allowed credit except of Rs. 2,10,990.

5. The perusal of the impugned order shows that the learned Commissioner (Appeals) has not accepted the grounds of the A.C. denying the modvat credit to the respondents on the ground that it was taken without filing the declaration, as required under Rule 57T of the Rules, by observing that the respondents had filed declaration and the jurisdictional A.C: acknowledged the same vide office letter dated 22.4.96, but the learned A.C. in his order has categorically recorded the findings that no declaration under Rule 57T of the Rules before taking the modvat credit, was filed by the respondents. The A.C. has only referred to the declaration filed by the respondents under Rule 57Q on different dates as given in the Order-in-Original at page-3, but there is no reference to the filing of the declaration under Rule 57T of the Rules by the A.C. The learned Commissioner (Appeals) has not mentioned in his order as to whether this declaration pertained to the goods in question or not. Even as to how this fact came to the notice of the learned Commissioner (Appeals), has also not been disclosed by him. He should have called for the report from the office of the A.C.regarding filing of this declaration especially when the A.C. in his order-in-original has given the definite findings regarding the non-filing of the declaration by the respondents under Rule 57T of the Rules. This aspect, in our view, requires scrutiny at the hands of the A.C. before allowing the credit to the respondents.

6. Similarly, the learned Commissioner (Appeals) has not accepted the grounds given by the A.C. in the order-in-original and allowed the credit even if the invoice was in the name of one unit of the respondents, while the credit was taken by another unit. According to the learned Commissioner (Appeals), since only one of the unit of the respondents was manufacturing excisable goods, the modvat credit could be availed only by the unit manufacturing the excisable goods but he had

lost sight of the fact that both the units of the respondents were independently registered under the Central Excise Act and had separate, distinct and independent identities. The learned Commissioner (Appeals) has, no doubt, referred to the ratio of law laid down in CD. Engg. Co.

v. CCE and the learned Counsel has also relied upon the ratio of law laid down in Ramgesh Chini Mills v. CCE, Kanpur 1998 (26) RLT 169, CD. Engg. v. CCE . Two Brothers v. CCE, Ghaziabad 2001 (44) RLT 52, Spani Automobiles v. CCE 2000 (37) RLT 182, Stadmed Pvt. Ltd. 1997 (21) RLT659, Parasrampuria Synthetics 1998 (28) RLT60 and Gelring India 1997 (23) RLT 396, before us, but to what extent, the ratio of law laid down in those cases is attracted to facts of the present case again requires detailed scrutiny of the facts and materiel now upon by the counsel. In the instant case, both the units have independent legal identities. The invoice pertained to one unit of the respondents which although not manufacturing excisable goods, but was independently registered and if had been manufacturing excisable goods, was to discharge its duty liability in respect thereof while clearing the same independently. The clearances of that unit could not be legally clubbed with other unit, manufacturing from the very beginning the excisable goods. All these facts have not been taken into consideration by the learned Commissioner (Appeals) while allowing the modvat credit to the respondents.

7.It has been also not disputed before us that the question as to whether the goods on which the modvat credit has been taken, fall within the definition of capital goods or not as per the provisions of Rule 57Q, requires re-examination in the light of the ratio of law laid down in CCE, Coimbatore and Ors. v. Jawahar Mills and Ors. 2001 (45) RLT 739. However, the Commissioner (Appeals) has rightly disallowed the credit of Rs. 2,10,000 and of Rs. 990 on the ground that the declaration was filed after taking the credit without seeking condonation of delay in filing declaration and that the proper procedure was not followed for availing the credit on the original copy of the invoice in place of duplicate which was allegedly lost. This part of the order of the Commissioner (Appeals) even has not been challenged before us by the respondents.

8. Regarding taking of the modvat credit by the respondents before commencement of the production, the Commissioner (Appeals) has observed that the credit had not been utilised by the respondents and was still standing in their RG-23C Part-II register. But since the matter is to be remanded to the adjudicating authority in the light of observations made above, for fresh decision, this aspect of the matter will be reconsidered by the authority.

9. In view of the discussions made above, the impugned order of the Commissioner (Appeals) to the extent to which it had been challenged in this appeal by the Revenue, is set aside and the matter is sent back to the adjudicating authority for fresh decision, in the light of the discussions made above, after hearing both the sides.