

Jay Pee Auto Plast Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-21-2002

Reported in : (2002)(84)ECC529

Judge : S T G.R., P Bajaj

Appellant : Jay Pee Auto Plast

Respondent : Cce

Judgement :

10 (iv) With regard to admissibility of Modvat on 'Proforma invoice' I find that supplier of inputs i.e. M/s. Escorts Yamaha Ltd. duty paying impugned documents which bore on their top as 'Invoice/Proforma/Invoice/Stock/Transfer/Advice/Branch/Transfer/Advice/' and they boldly ticked all the said documents as 'Proforma Invoices'. This ticking/marking clearly establishes that these documents are not 'Invoices' otherwise the consignee must had ticked on these documents as 'Invoices' because option to tick 'Invoices' was readily available inscribed on the documents. Besides, the mentioning of note on all these documents as - 'Note-material being supplied for our own job work No. as per P.O.' also establishes that the status of these documents was not that of an Invoice' which is issued for sale of the goods under Rule 52A. This note proves that there was no sale of the goods but transfer of Raw Material for undertaking some job work. This motive establishes the status the documents something like internal challan, which does not sound well to treat them as Modvatable Invoices. Besides, Modvat cannot be allowed on such proforma invoices, as these are not the final documents.

Proforma invoices are normally issued in advance merely to indicate the price offered by any seller. It does not depict the actual value and duty paid thereon. In fact it cannot be considered as a duty paying document issued under Rule 52A because it has not been specified under Rule 57G(3). Hence the credit taken by the party on the basis of these 'Proforma Invoices' is inadmissible.

2. The facts of the case briefly stated are that the appellant is engaged in the manufacture of plastic moulded parts of motor vehicle and two wheelers and were availing modvat credit of duty paid on inputs. During the period 6.1.97 to 9.7.97 the appellant availed credit of Rs. 10,01,674 on the strength of 33 proforma invoices issued by M/s.

Escort Yamaha Motors Ltd. On a document in which on top was printed "invoice/proforma invoice/stock transfer advice/branch transfer invoices and wherein 'proforma invoice' was ticked. The Department alleged that proforma invoice was not the prescribed document on the strength of which the modvat credit could be taken. They accordingly, issued Show-cause notice on this count alongwith other objections. The objection that remained surviving was in respect of these 33 invoices.

3. Shri J.P. Kaushik, learned Counsel appearing for the appellants (s) submits that the goods had been cleared under Rule 52A on payment of duty; that copies of these invoices had been filed with the Jurisdictional Range Office; that such invoices contained all the particulars as per law; that Modvat credit was taken after receipt of the goods in the factory; that in the circumstances, the credit was not deniable. Learned Counsel submits that proforma invoices in dispute were pre-authenticated, were assigned serial numbers, were marked 'Duplicate for Transporter'; that they show the date and time of issue of removal of goods and vehicle number; that particulars of payment of duty with reference to the debit entries are indicated in the proforma invoices; that all the particulars required in terms of Rule 52A were indicated in the invoices.

4. Learned Counsel submits that the documents which are composite one the only mistake was that proforma invoice printed on the top of the invoices among others was ticked though alongwith proforma invoice the documents showed

invoice/transfer advice/branch transfer advice etc.

5. Referring to the impugned order learned Counsel submitted that in the last paragraph of the order the learned Commissioner (Appeals) observed--"Proforma invoices are normally issued in advance merely to indicate the price offered by any seller." He submits that this observation of the learned Commissioner (Appeals) is perfectly correct.

He submits that learned Commissioner (Appeals) further observed, "it does not depict the actual value and duty paid thereon". Counsel submits that this part of the observation of the Commissioner (Appeals) is totally false and incorrect inasmuch as all the particulars that is pre-authentication, serial No., duplicate for transporter, date and time of issue and removal, vehicle number, particulars of demand of duty with reference to debit entries were specifically mentioned in the documents and therefore, this finding of the learned Commissioner (Appeals) was wrong.

6. Learned Counsel also submitted that under Rule 52A there is an explanation, which defines invoice/gate pass or own document/challan/advice/other documents. Learned Counsel submits that thus it is not the invoice alone which has been indicated as document on the strength of which Modvat credit could be taken. There were other documents also. The learned Counsel submits that since all the particulars were furnished in the documents, which work as invoice also, therefore, denial of modvat credit was not warranted in the present case.

7. Learned Counsel referred to the judgment of this Tribunal in the case of CCE, Hyd, v. Moldtek Plastics Ltd 2002 (50) RLT 944 in which the Tribunal in para 3 held-- It is well settled position that the job worker is entitled to take Modvat credit. Furthermore the Commissioner (Appeals) has held in favour of the assessee, following the various decisions of the Tribunal as can be seen from para 7 of the impugned order. Para 6 & 7 of the impugned order, which is as under-- 6. I find that in the instant case, Modvat credit has been disallowed for the sole reason that the invoice on which credit is availed are received in stock transfer and not "sale" transaction, whereas as per Notification No. 14/95-CE (NT) dated 20.4.95, there should be sale of goods to the person availing modvat credit under Rule 57G of

the Central Excise Rule, 1944. The appellants have claimed that they have fully complied with all other conditions of availing modvat credit, i.e., the goods are duty paid, they are otherwise eligible to modvat credit, they are received into the factory under excise invoices, they are properly accounted for and used in the manufacture of dutiable final products.

7. The Tribunal in the case of BPL Ltd. v. CCE 1997 (73) ECR 829 (T) has held that the term "sale" as defined under Section 2(h) of the Central Excise Act, 1944 also includes book adjustments made in the case of stock transfers. The Tribunal in the case of Modern Food Industries (India) Ltd., 1988 (18) ECR 541 has held that transfer of goods by 'book adjustment from one unit to another of a multi unit , organization is adequate for the purposes of the definition of "sale" in CEA; Section 2(h), and Modvat credit of the duty paid on the goods so transferred is permissible. Commissioner (Appeals), Tiruchirapally in the case of Coimbatore Cots and Coating Ltd., 1999 (106) ELT 575 Commissioner (Appeals) has held that the stock transfer is covered within the meaning "sale" as defined in Section 2(h) of the Central Excise Act, 1944 and allowed the credit. On the similar, grounds at the Asian Paints' own depot, the Show Cause Notice issued by the Department seeking imposition of penalty was set aside by the Commissioner of Customs & Central Excise, Pune by his Order-in-Original No. 17/CEX/1997 dated 17.2.97. I am in respectful agreement with the above case laws. Applying the ratio of the above case laws, I hold that the invoices on which modavt credit has been disallowed vide the impugned order, will fall well within the ambit of "sale" as stated in Notification No. 14/95-CE (NT) dated 20.4.95 and, therefore, are eligible to Modvat credit. The impugned order denying the modvat credit is not sustainable. Since the modvat credit has been held to be admissible to the appellants, the question of imposition of penalty does not arise. The same is set aside.

He also referred to the judgment of the Larger Bench of this Tribunal in the case of Kamakhya Steels (P) Ltd. v. CCE, Meerut 2000 (40) RLT 575 in which the Tribunal held in para 8 as under-- 8. We are not convinced with the arguments advanced on behalf of the Revenue that amended provisions and Circulars referred to above are not applicable to the point in issue. On going through the amendment to Rule

57G particularly with reference to Sub-clause II of 2(a) of 7/99-CE (NT) dated 9.2.99 the Circulars and the case law, we find that matter is required to be re-examined as the intervener rightly pointed out. In the view we have taken, the matter is remanded to the jurisdictional Assistant Commissioner to examine the admissibility of Modvat credit for the period covered under Appeal No. E/1840/95 and to pass an order in accordance with law.

Learned Counsel, therefore, submits that in view of the above submissions the appeal may be allowed.

8. Shri M.M. Dubey, learned DR submits that a proforma invoice in commercial parlance means an invoice issued in anticipation of sale of some goods specially for the purpose of perusal and approval by the consignee. He submitted that proforma invoice was not a document specified under the then Rule 57G(2)/57G(3). Learned DR submits that Larger Bench of this Tribunal in the case of Avis Electronics held that requirements in the Rules are mandatory and not of technical or procedural nature. He submits that prescription of a document in these terms must be considered as mandatory. He, therefore, submits that learned Commissioner (Appeals) has rightly disallowed Modvat credit on these 33 proforma invoices.

9. We have given our careful consideration to the submissions made by both the sides. We note that the document in dispute is a composite document serving as invoice/proforma invoice/stock transfer invoice/branch transfer advice. In these words the 'proforma invoice' has been ticked. However scrutiny of the document showed that it contains serial No., amount of duty collected, credit of duty taken, date and time of removal, vehicle number and as also an indication 'duplicate for transporter'. Thus we find that the document in question is not a proforma invoice as is known in commercial parlance, but an invoice containing all the particulars required under Rules 52A and 57A. Since the document ticked as 'proforma invoice' contains all the particulars necessary for availing modvat credit we hold that it was a document on the strength of which modvat credit could be taken.

Accordingly, the appeal is allowed. Consequential relief, if any, shall be admissible to the appellants in accordance with law, Cross-Objection filed by Revenue is also

disposed of.

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