Cce Vs. Punjab Concast

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-05-2002

Reported in : (2003)(85)ECC50

Judge : S T G.R., P Bajaj

Appellant : Cce

Respondent : Punjab Concast

Judgement :

1. Revenue has filed this appeal being aggrieved by the impugned order passed by the Commissioner (Appeals). The learned Commissioner (Appeals) in the impugned order had held-- "Whereas, in the instant case the compressors falling under sub-heading 8414.80 were used for pneumatic operation in the arc furnace and the same cannot be treated as compressor used for refrigerating and air-conditioning appliances. In view of above discussions, I hold that the appellant had rightly taken Modvat credit on the compressors." "As the Modvat credit has been found admissible to the compressors used by the appellant, then the Modvat credit taken on its parts cannot be denied irrespective of the fact that sub-heading under which 'Air Receiver Tank' is classified is not covered under the schedule of items listed in Rule 57Q. This aspect has already been clarified by Ministry of Finance vide its Circular No. 276/110/96-TRU dated 2.12.96," 2. Facts of the case briefly stated are that the respondents herein are engaged in the manufacture of iron and steel products. They are availing Modvat credit in terms of Rule 57A and 570 of the Central Excise Rules, 1944 in respect of duty paid on inputs and capital goods.

It was alleged that the respondents had taken Modvat credit amounting to Rs. 19,84,069.64 on the inputs i.e. melting scrap for utilizing the same in the payment of Central Excise duty on the finished products.

The respondents herein imported melting scrap. It was alleged that they wrongly availed Modvat credit on the strength of Bill of Entry after expiry of six months. A show-cause notice was accordingly issued to the respondents herein asking them to explain as to why Modvat credit should not be disallowed and why penalty should not be imposed. In reply to the show-cause notice the respondents herein submitted that Rule 57G provided that the manufacturer shall not take credit after six months of the date of issue of any of the documents specified in the first proviso to this sub-rule. It was submitted by them that Sub-rule (5) of Rule 57G provides that credit shall also not be taken by the manufacturer after six months of the date of issue of any documents specified in Sub-rule (3) and where the intermediate products manufactured by the user of inputs specified under Rule 57A are received by the manufacturer after 9 months. It was submitted by them that Trade Notice No. 5-CE/97 dated 20.1.1997 issued by Chandigarh Commissionerate cannot override the provisions of Rule. It was, therefore, submitted by them that Modvat credit was correctly taken.

Deputy Commissioner disallowed Modvat credit and imposed a penalty.

3. Arguing the case for Revenue Shri Mewa Singh, learned SDR submits that learned Commissioner (Appeals) has erred in allowing the Modvat credit availed by the respondents herein after expiry of six months from the date of payment of duty on Bills of Entry; that Trade Notice No. 5-CE/97 dated 20.1.97 which clarified that the period of six months for the purpose of taking Modvat credit in the case of imported goods shall be computed from the date of payment of duty and not from the date of issue of Bill of Entry, was issued for the convenience of the Trade which was based on the Circular No. 275/109/96-CX dated 26.11.96 that the Apex Court in the case of Paper Products Ltd. v. CCE, 1999 (66) ECC 36 (SC) : 7999 (112) ELT 765 held that Circular issued by the Department is binding on the Department Authorities; that the Tribunal in its Final Order Nos. 104--107/2000 dated 24.3.2000 in the case of M/s. Oswal Woollen Mills, Ludhiana held that Trade

Notices are binding on the departmental authorities; that Rule 57G (5) of the Central Excise Rules, 1944 envisages that Modvat credit can be availed inter alia on Bill of Entry within six months from the date of issue and thus to hold that limitation of six months for taking credit is not applicable in the case of Bill of Entry is bad in law and against the spirit of the statute. He, therefore, prayed that the appeal may by allowed.

4. Shri Harbans Singh, learned Counsel appearing for the respondents herein submits that learned Commissioner (Appeals) observed that in the instant case the Bills of Entry were filed by the appellants to the Customs authority during the month of April 1996, May 1996, June 1996 and July 1996; that Bills of Entry were withheld by the Customs Authorities for the purpose of inspection of the imported material and were released to the appellants on 7.2.97 and 29.3.97. Learned Commissioner (Appeals) observed, "I find that the appellant had taken Modvat credit on these Bills of entry on 11.2.97 and 15/16.4.97 that is well within six months from the date of release of the Bills of Entry by the Customs". Learned Counsel, therefore, submits that respondents herein had correctly taken the Modvat credit within a period of six months from the date of issue (release of the Bills of Entry). He therefore, prays that the appeal may be rejected.

5. We have heard the rival submissions. We have also perused the evidence on record as also the case law cited by both the sides. We note that Chandigarh Commissionerate had issued Trade Notice No. 5/97 in which it was clarified that the date of payment of duty shall be treated as the date of issue of the Bill of Entry in terms of Rule 5G(5) of the Central Excise Rule, 1944. We note that Rule 5G(5) of Central Excise Rules envisages that the Modvat credit can be availed inter alia on Bill of Entry within six months from the date of issue. A question, therefore, arises, "what is the date of issue; is it the date of payment of duty or is it the date on which Bills of Entry were released by the Customs Authority? In the instant case we note that the Customs Authorities have retained these Bills of Entry for a considerable long period and then released them only on 7.2.97 and 29.3.97. In support of this Bills of Entry were retained by the Customs, a certificate was obtained. In view of the facts of this case we hold that six months period should be counted only from 7.2.97 and 29.3.97 when the Bills of Entry were released by the

Customs Authorities. It view of this verified fact we hold that date of release of Bills of Entry after assessment to the importer is the date of Issue of Bills of Entry for the purpose of Sub-rule (5) of Rule 57G.Moreover, the words used in Sub-rule (5) of Rule 57G are to be Interpreted according to the facts of the case. Date of issue of the Bill of Entry may vary from case to case depending on the particular case.

6. Moreover, Trade Notice cannot take precedence over mandatory requirements. In this view of the matter we find no merits in the appeal filed by Revenue. In the circumstances, the appeal filed by Revenue is rejected.