

Amtek Auto Ltd. and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-06-2002

Reported in : (2002)(105)LC874Tri(Delhi)

Judge : K Kumar

Appellant : Amtek Auto Ltd. and ors.

Respondent : Cce

Judgement :

1. These appeals are filed by the appellants against the order dated 21.11.2001 passed by Commissioner Central Excise Delhi-III. The issue relates to denial of modvat credit on capital goods. Since the issue in all the 5 appeals is common, all the appeals are being disposed of by this common order. Briefly stated the facts of the case are that M/s Amtek Auto Group of companies (herein after called "appellants") at the material time was comprised of 5 manufacturing units namely: and were engaged in the manufacture of Motor Vehicle Paris falling under Chapter 84, 87, 73 and 72 of the Central Excise Tariff Act 1985.

The appellants were availing modvat credit facility in respect of duly paid on capital goods under Rule 57-Q of the Central Excise Rules 1944 (for short "Rules"); that all the above five units including head office situated at J 206-Saket, New Delhi were raided by the Central Excise Officers of M.T. Division Branch Delhi-III, Commissionerate, Gurgaon at a time on 22.12.1998. Each of the above establishments was visited by separate team of officers headed by Assistant

Commissioner or superintendent. Apart from thorough search of the individual premises, an intensive verification of raw material, finished goods and capital goods was also conducted which lasted from 11 hours of 22.12.1998 to late hours of the next day. During the course of search nothing incriminating or irregular was found in either of the units except that some duty paid defective goods lying in the head office and some unfinished goods purported to be excess than recorded in RG-I register lying in AAL-I were illegally seized. Proceedings in these two seizure cases are going on separately and the same are not, therefore, subject matter of the appeal. During the course of search certain documents were also taken into custody from all the establishments; that the capital goods on which modvat credit was taken were physically verified by the raiding party on 22.12.1998 and were found duly installed in each of the unit; that there after the appellants did not hear any thing from the Central Excise department except that two show cause notices both dated 7.6.1999 in respect of the alleged 2 seizure cases which are not the subject matter of the appeal were received, proceedings therein are going on separately; that neither any of the units of the appellants were visited by the Central Excise Officers nor any information called for after 22.12.1998; that only after lapse of 3 months when the department had failed to make out any case against the appellants as a result of last publicised rates, concerned Central Excise Officers conspired and transplanted the false case of modvated capital goods in all the 4 units of appellants to justify their action on unlawful raid; that the Central Excise Officers extorted the submission of Shri Vinod Uppal Manager (Accounts) on 11.3.1994 in confirmation of the shortage of modvatted capital goods in the 4 units of the appellants detected by them by visiting; that commital statement of Shri Uppal is not corroborated by any evidence and is, therefore, far away from the real facts and that the false statement of Shri Uppal is established by the fact that he has been asked to admit shortage of machines on 11.3.1999 in respect of verification said to be done by the officers on 2.2.1999, 4.2.1999, 5.2.1999 and 6.2.1999 behind his back.

2. Shri Bipin Garg learned Advocate appearing on behalf of the appellants has submitted that all the 4 units mentioned in the show cause notices are separate legal entities; individually incorporated with the registrar of the companies located at different places and manufacturing different excisable goods, these units are

also separately registered in Central Excise Deppt. and with other state agencies like Sales Tax, ESI etc.; all 4 units submitted their replies to the show cause notices separately; that case was last listed for hearing on 9.3.2000 but the Commissioner of Central Excise Delhi-III to the respondent with this appeal adjudicated to the show cause notice vide in original No. 2/2000 dated 28.2.2000 without affording opportunity of personal hearing, without appreciation of submission made by appellants in their written reply. That earlier CEGAT vide final Order dated 28.6.2000 has remanded the matter on the ground of violation of principles of natural justice; that the personal hearing was fixed on 29.8.2001 and the appellants vide letter dated 23.8.2001 individually requested for permission to procure documents/records assumed by the officer so as to enable them to prepare defence reply and appellants also requested for one months time for submission of defence reply; that without appreciating submission made by the appellants in their letter dated 23.8.2001, another date of hearing was given on 27/28.9.2001; appellants vide letter dated 28th September 2001 again requested for inspection/supply of the relied upon record/document before the said date of hearing; despite the subsequent repeated requests, the respondent verbally rejected the request for supply/inspection of the relied upon documents; accordingly appellants appeared before him on 1.10.2001 and submitted their written submission individually; that they produced documentary evidence in support of the fact that the machines in question are installed in their respective unit; the respondent unilaterally and arbitrarily decided the case vide de novo order in original No. 55/2001 dated 21.11.2001 without observing the principles of natural justice and without taking into consideration the submissions made by the appellants, confirming and appropriating the same and imposing equivalent amount of penalty under erstwhile Rule 57U(6) read with 173Q besides imposing penalty of Rs. one lakh on the Managing Director under Rule 209A; that only dispute in the present case is that the appellants having manufacturing units as mentioned in the preceding paras had taken irregular modvat credit on the capital goods which were alleged to be not found installed or used in the respective factory; that contention of the department is merely based on the statement of Shri Vinod Uppal (Manger of Accounts and Finance) without verification of its authenticity with reference to the relevant accounts records maintained by the

appellant; with regard to the receipt, installation and use of machines in question in respect of the units for manufacturing final product cleared on payment of duty and without physical verification of the capital goods in question in the respective units; that in de novo proceedings learned Commissioner had failed to appreciate the submissions made in their reply filed on 13.12.1999 to the impugned show cause notice, written submission of 1.10.2001 filed at the time on the personal hearing on 1.10.2001; that the observation of the learned Commissioner is based on assumption and presumptions entirely based on false investigation report of the Central Excise Officers that Commissioner has merely gone by the statement of Shri Vinod Uppal without verification of his correctness with reference to relevant records and documents; that statement of Shri Vinod Uppal recorded on 1.3.1999 regarding verification of the capital goods in question with reference to RG 23 C (Pt I and II) is meaningless when he was not participant to the physical verification done on 2.2.1999, 4.2.1999, 5.2.1999 and 6.2.1999 in respective factory; that from the statement of Shri Vinod Uppal it is not clear whether list of capital goods drawn by the investigating officer was of those capital goods which were installed in the factory or of those not installed in the factory; that statement of Shri Vinod Uppal is not only confusing but contrary in itself, which itself is sufficient evidence to prove that it was dictated and tutored; that when the statement of Shri Vinod Uppal was not reliable being contrary, it was incumbent on the respondent to have brought on records some other positive and concrete evidence to sustain the allegation; that the impugned order travels beyond the allegation in the show cause notice; that the relevant copies of RG-23C Pt-I and II submitted by the appellant together with the relevant invoices clearly establish the receipt/installation of the machine in question in a particular factory to whom it was consigned; that modvat credit was availed on the basis of valid duty paying documents and capital goods were appropriately accounted for in the Central Excise statutory records and were verified by the Deptt. officers on their visit to the respective units; that impugned order is non speaking as well as also violated principles of natural justice as the submissions made by the appellants have not been considered by the Commissioner and viz-a-viz, the request for inspection/supply of the relied upon documents has also not been acceded to by the commissioner as the same were in possession of the department though the

same have been relied upon in the show cause notice; that nothing has been brought, on record by the Deptt. or in the show cause notice that they have found any thing incriminating during their visit; that Shri Uppal was not a technocrat expert in the field so as to verify the listed items shown to him which were available in the factory; that the statement recorded would have been of some value if the same was from the works manager.

3. That in support of his contention learned Advocate relied on the following decision: 1. Deepak Tandon reported in 2000 (126) ELT 1079 to the effect that Charge of Clandestine removal is required to be proved by production of positive and tangible evidence.

effect that clandestine removal not established in absence of any positive evidence. Learned Advocate very categorically submitted that goods in question were cleared on payment of duty and machines installed in its place; that all the machines were received in 1995-96 and modvat credit on capital goods came into effect in March 1994, whereas machines were installed in 1995-96; that department have never raised any objection at any point of time; that he emphatically submitted that no panchanama was prepared, no independent witnesses were examined, no statement was taken by the officers; that show cause notices have been finalised on 12.1.1999; that machines were shifted from one unit to another unit; that in the show cause notice dated 11.12.1998 in the 1st para it is clearly mentioned that machines were found; that show cause notice dated 12.8.1998 in 2nd para it is only stated "machine is missing"; that it may be seen from page 109 para-9 of the order in-original that Commissioner has not given any findings in this regard; that no investigation was done; that no circumstantial evidence has been brought on record to prove clandestine removal; learned Advocate also relied on the decision . Shri S.C. Pushkarna. learned JDR appeared on behalf of the Revenue and the submitted that for shifting of machines from one to another unit the permission is required under Rule 57(2) and (7); that intimation/ acknowledgment is also required; that Shri Uppal (Deputy Manager accounts) was an authorised representative; that statement has never been retracted; that he reiterated the findings of the Commissioner.

4. That in his rejoinder the learned Advocate submitted that goods in question were installed in respective units; that show cause notice at pages 34, 41, 50 do not relate to the present case and, therefore, provisions under Section 57(2) pointed out by the learned JDR are not attracted in the present case as the goods were not removed; that the statement of the authorised officer of the company relied on by the Deptt. to show cause as on page 34, 41, 50 are not relevant for the present case and, therefore, the contention of the learned JDR with regard to their retraction does not arise; that he finally submitted that the appeals filed by the appellants may be allowed.

5. After hearing rival submissions, perusal of the records and the case laws cited by the learned Advocate, I find that case is wholly based on the statement of Shri Vinod Uppal who was not the works manager i.e. he was not a technocrat and as such he was not in a position to identify or comment upon the technical aspects of the goods in question, besides this, in a case of this nature it is very surprising that no panchanama has been prepared, no independent witness have been brought on record, no statement has been taken at the office of the appellants. Thus, the whole case appears to be based on not on real facts and evidence.

Neither department has found any incriminating documents in possession of the appellants nor any investigation has been done in the case, nor any circumstantial evidence brought on record to substantiate the allegations made in the show cause notice, nor any findings were given thereon by the Commissioner. Such cases are required to be proved in strict sense with the positive and tangible evidence as per the settled law as mentioned above. Therefore, I do not find any substance in the order passed by the learned Commissioner and as such the impugned order is set aside and the appeals filed by the appellants are allowed.

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