

Calcom Electronics Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-26-2002

Reported in : (2002)(84)ECC804

Judge : P Chacko

Appellant : Calcom Electronics

Respondent : Commr. of C. Ex.

Judgement :

1. The appellants were engaged in the manufacture of excisable goods falling under T.H, 85.29, 85.40 and 85.04. During the period July to Sept., 1995, they cleared certain inputs (useable for the manufacture of VHF tuners, one of their final products) on payment of duty by way of reversal of credit, to another company, M/s, Daishin Denken India Pvt. Ltd., who were also manufacturers of VHF tuners. Such clearance of the goods was under cover of invoices raised under Rule 52A of the Central Excise Rules, 1944. After about one year, the buyers returned the goods to the appellants under cover of the said invoices and the latter took re-credit of the duty on the returned inputs in their RG-23A Part-II in Sept, 1996, amounting to Rs. 87,985/-. The department, by show cause notice, proposed to disallow the credit, alleging that the party had contravened the provisions of Rule 57G read with Notification Nos. 14/96-C.E. (N.T.), 26/96-C.E. (N.T.) and 28/95-C.E. (N.T.). The tenor of the show-cause notice was that the party was not eligible to take Modvat credit on the inputs on the strength of their own invoices. The department wanted to recover the above amount under Rule

571. The department's proposal was contested by the party. The jurisdictional Asstt. Commissioner, who adjudicated the dispute, confirmed the demand of duty on the ground that their own invoices whereunder the goods had originally been cleared by them to their buyer and returned by the latter were not valid duty-paying documents under Rule 57G(2) for the purpose of Mod-vat credit. The appeal preferred by the assessee against the decision of the original authority was rejected by the Commissioner (Appeals). Hence the present appeal.

2. Ld. Consultant for the appellants submits that the only ground on which both the lower authorities have denied the Modvat credit is that the credit was taken on the basis of invoices issued by the appellants themselves. He submits that the appellants had cleared their inputs under cover of those invoices as if they were manufacturers of those goods in terms of Rule 57F(1) (ii). Those invoices were, therefore, issued under Rule 52A. Admittedly, the inputs covered by those invoices were returned by the buyer to the appellants and utilised by the latter in their factory in the process of manufacture of VHF tuners.

Consultant submits that there is nothing in Rule 57F which prohibits availment of Modvat credit on the inputs on the strength of invoices issued under Sub-rule (1) of the Rule. Ld. Consultant further relies on the Board's Circular No. 282/116/96-CX., dated 30-12-96, which clarified that the Modvat credit of the duty paid on inputs cleared by a manufacturer under cover of Rule 52A invoice could be taken by the manufacturer where the goods were returned by their buyer under cover of the same invoice.

3. Ld. JDR, on the other hand, submits that the Board's Circular is not applicable. According to him, the circular pertains to inputs cleared by other manufacturers.

4. I am unable to accept the DR's argument as it is not consistent with the provisions of Rule 57F as the Rule stood at the material time.

Under Rule 57F (1) (ii), a manufacturer of final product could clear his inputs as if he was the manufacturer thereof. That is why the manufacturer could issue Rule 52A invoice. The issuance of Rule 52A invoice by the appellants while clearing the inputs has not been questioned by any of the lower authorities, nor was it a bone

of contention in the show-cause notice. Rule 57A was the substantive provision at the material time for availment of Modvat credit on inputs. That provision permitted a manufacturer of final product to take Modvat credit of the duty paid on inputs, on the strength of invoice issued under Rules 52A by the input-manufacturer. In the instant case, the appellants had cleared the inputs originally on payment of duty under Rule 52A invoice as if they were manufacturers of the inputs. Subsequently, they took Modvat credit of duty on those goods in their capacity as manufacturers of VHP tuner, for which the said goods were admittedly inputs. I do not see any illegality or irregularity in this action of the appellants. The clarification offered by the Board is consistent with this position of law and the same is binding on the departmental authorities. The provisions of Rule 57F(1) require to be read with those of Rule 57A. When the provisions are read together, the appellants are eligible for the credited. Ld. DR has also raised a time-bar issue. He has submitted that the credit was taken after a lapse of one year from the date of issue of the invoices.

I find that the time-bar issue has not been raised by the department to deny the Modvat credit.

5. In view of the findings recorded above, I hold that the Modvat credit in question is admissible to the appellants. The appeal is allowed.

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