Commissioner of Central Excise Vs. Goodlass Nerolac Paints Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-18-2002

Reported in : (2003)(87)ECC125

Judge : A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Goodlass Nerolac Paints Ltd.

Judgement :

1. Revenue has preferred this appeal against the Order-in-Appeal No.406/98 dated 2.12.98 in which the Commissioner (Appeals) has allowed the modvat credit to the respondents, M/s. Goodlass Nerolac Paints Ltd. I heard Shri. H.C. Verma Ld. DR for the revenue and Shri M.P. Devnath Ld. Advocate for the respondents.

2. I have considered the submissions of both the sides. The Commissioner (Appeals) in the impugned order had allowed the modvat credit of Rs. 58,657 on the ground that the credit was taken by the respondents within six months from the date of issue of Notification No. 28/95 dated 29.6.95 imposing restriction regarding availment of credit within six months from the date of invoice. This issue stands decided by the decision of the Supreme Court in the case of Osram Surya (P) Ltd. v. CCE Indore, 2002 (81) ECC 465 (SC) : 2002 (50) RLT 129 (SC) wherein the Supreme Court was considering the question whether the limitation of six months imposed with effect from 29.6.95 is applicable to the cases where credit is taken on or after 29.6.95 on the strength of documents issued prior to 29.6.95. It has

been held by the Supreme Court that language of the proviso is unambiguous as it specifically states that the manufacturer cannot take credit after six months from the date of issue of duty paying documents. "A plain reading of this sub-rule clearly shows that it applies to those cases where a manufacturer is seeking to take the credit after the introduction of the Rule and to cases where the manufacture is seeking to do so after a period of six months from the date when the manufacturer received the goods. This sub rule does not operate retrospectively in the sense it docs not cancel the credit nor does it in any manner affect the right of those persons who have already taken the credit before coming into force of the Rule in question. It operates prospectively in regard to those manufacturers who seek to take credit after coming into force of this Rule." Following the ratio of this decision. I hold that as the credit had been taken after the expiry of six months from the date of issue of the invoice, the respondents are not eligible to take the modvat credit. The Revenue's appeal on this count is allowed.

3. The Commissioner (Appeals) had also allowed the modvat credit to the appellants though the invoices were not in pink colour as required under Rule 57 GG of the Central Excise Rules, 1944. Ld. Advocate has relied upon the decision of the Appellate Tribunal in the case of Continental Chemicals Ltd. v. CCE, Ghaziabad, 2002 (51) RLT 313 wherein the Tribunal had allowed the modvat credit on the strength of invoices which were not in pink colour. He has also referred to the Board's Circular No. 441/7/99-CX dated 23.2.99 wherein the guidelines had been issued to the departmental officers in respect of modvat credit in pursuance of Notification No. 7/99 Central Excise (NT) dated 9.12.99 empowering the Assistant Commissioner to allow the credit ignoring minor procedural lapses in filing the declaration or in invoices/documents on the basis of which credit is to be taken. He also relied upon the decision of the Larger Bench of the Tribunal in the case of Kamakhya Steels Pvt. Ltd. v. CCE, Meerut, 2000 (121) ELT 247.

Following the ratio of the Tribunal decision in the case of Continental Chemicals and also in view of the Board's Circular dated 23.2.99 the modvat credit is not deniable to the respondents for the procedural lapse of the invoices not being in pink colour. Accordingly the Revenue's appeal on this aspect.is rejected.

4. The Assistant Commissioner had denied the modvat credit to the respondents on the ground that RG 23 D entry number and date was missing in the invoice which were also not in pink colour. The Commissioner (Appeals) had remanded the matter to the Assistant Commissioner to make an inquiry from the jurisdictional Superintendent about the duty paying character as the respondents had submitted a certificate from the supplier about the payment of duty. In view of the Board's Circular dated 23.2.99 I do not find any infirmity in the impugned order for remanding the matter to ascertain the duty paying nature of the invoice. The appeal filed by the Revenue on this count is rejected.