Em Ess Electricals Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-2003

Reported in : (2003)(159)ELT730TriDel

Judge : A T V.K., P Bajaj

Appellant : Em Ess Electricals

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal has been filed by the appellants against the impugned order-in-appeal dated 9-7-2002 vide which the Commissioner (Appeals) has confirmed the duty demand of Rs. 6,37,246/- with penalty of Rs. 6 lakhs.

2. The appellants are engaged in the manufacture of electric wires and cables. They had been availing the benefit of Modvat credit scheme on the raw materials such as copper wires. They purchased copper wires from M/s. Kejriwal Enterprises and M/s. Priyanka Metal Overseas under the cover of 29 gate passes during the years 1991-92 and 1992-93. The purchased copper wire was used by them in the manufacture of cables and Modvat credit was taken in respect thereof on the basis of gate passes.

However, during the enquiry by the officers of Central Excise, it revealed that Kejriwal Enterprises and Priyanka Metal Overseas did not manufacture the copper wires and that they only issued the gate passes to the appellants for claiming

Modvat credit. Accordingly, the appellants were served with the show cause notice for disallowing Modvat credit of Rs. 6,37,246/- on the ground that the copper wire purchased by them from the above said firms was neither received in their factory nor used in the manufacture of the final product. The extended period of limitation was invoked in the show cause notice and penalty was also proposed to be imposed. The appellants contested the contents of that notice. They denied of having not received the inputs through the disputed 29 gate passes from Kejriwal Enterprises and Priyanka Metal Overseas. They alleged that the gate passes were duly submitted by them with RT 12 returns and made entries in the RG 23A register and that payment was made by them through cheques. The adjudicating authority did not accept their version and confirmed the demand with penalty detailed above. A separate penalty of Rs. 50,000/- was also imposed on Shri Subhash Gahrotra, partner of the appellants.

The Commissioner (Appeals) however set aside that penalty. But maintained the rest of the order-in-original of the adjudicating authority against the appellants.

3. The learned Counsel has contended that there is no tangible evidence on the record to prove the non-receipt and non-utilisation of the raw material i.e. copper wire by the appellants, in the manufacture of their final product. The enquiry made against Kejriwal Enterprises and Priyanka Metal Overseas regarding their manufacturing activity, had been wrongly used against the appellants without any basis. He has also contended that the demand is time-barred.

4. On the other hand, the learned SDR has reiterated the correctness of the impugned order.

5. We have heard both sides and gone through the record. From the record and the perusal of the order-in-original as well as the impugned order, it is evident that Modvat credit of the disputed amount was availed by the appellants on the strength of 29 gate passes during the years 1991-92 and 1992-93. The copies of those gate passes were even submitted by them along with RT 12 returns filed by them during those years. Even entries were also made by them in the RG 23A register. Shri Subhash Gahrotra, partner of the appellant in his statement dated 18-9-95, when enquiry was being conducted by the officers of the Central Excise

department against Kejriwal Enterprises and Priyanka Metal Overseas, about their manufacturing activities, disclosed to the officers about the receipt of the raw material i.e. copper wire by his firm from those firms against payment which was made through cheques.

The gate passes were even defaced by the officers of the Central Excise department. Therefore, it is quite evident that the Department knew all the details about the availment of the Modvat credit of the disputed amount by the appellants on the strength of disputed 29 gate passes issued by the above said firms. No finger was raised or doubt was expressed by the Excise department at the time of scrutiny of the RT 12 returns of the appellants or while defacing the gate passes.

6. There is also no tangible evidence on the record to suggest that the raw material i.e. copper wire covered by the disputed 29 gate passes was neither actually received by the appellants in their factory nor utilized in the manufacture of the final product. No evidence to substantiate these facts was found from the factory premises or from the entries in the statutory records, of the appellants. Mere lack of manufacturing facilities detected by the Central Excise officers with the firms Kejriwal Enterprises and Priyanka Metal Overseas could not lead to an irresistible conclusion that the raw material covered by 29 gate passes was never supplied by them to the appellants. No presumptions or assumptions could be made or drawn against the appellants, from the enquiries conducted against the above said two firms, from whom the appellants purchased the raw material through the disputed gate passes. There is also no evidence to suggest if the goods were never manufactured by the appellants from the material received by them under the cover of the disputed gate passes. From their record, there is nothing on the record to suggest, if any clue or material was found about the actual non-receipt of the raw material by them and non-production of the final product out of that material during the period in question. Therefore, in our view, the Modvat credit of the disputed amount could not be disallowed to the appellants.

7. Apart from this, the demand for the recovery of the Modvat credit amount in dispute from the appellants, is on the face of it time-barred. The Modvat credit was

availed by them on the strength of 29 gate passes during the years 1991-92 and 1992-93. Copies of all those gate passes as observed above, were submitted by them along with RT 12 returns. Even Shri Gahrotra, partner of the appellant firm, in his statement dated 18-9-95 disclosed about the receipt of the raw material from Kejriwal Enterprises and Priyanka Metal Overseas, against payments made through cheques. Therefore, it cannot be said that there was suppression of any material fact about the availment of the Modvat credit of the amount in question, by the appellants, from the Department. Rather the Department very well knew about all the facts and even defaced those gate passes on the basis of which Modvat credit was taken by the appellants. The show cause notice was admittedly issued on 20-3-96. Keeping in view all the above referred facts and circumstances, the extended period of limitation could not be invoked.

The show cause notice had been issued after the expiry of normal statutory period prescribed under the law. Therefore, the demand is time-barred.

8. In view of the discussion made above, the impugned order of the Commissioner (Appeals) cannot be legally sustained and the same is set aside. The appeal of the appellants is allowed with consequential relief, if any, permissible under the law.