Trinity Engineers Ltd. Vs. Commissioner of C. Ex.

Trinity Engineers Ltd. Vs. Commissioner of C. Ex.

SooperKanoon Citation : sooperkanoon.com/30579

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-08-2003

Reported in : (2003)(162)ELT539Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Trinity Engineers Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The question for consideration in this appeal is the eligibility of the appellant to take Modvat credit of the duty paid on iron and steel that was supplied to it by Visvesvaraya Iron & Steel Ltd., Bhadravathi.

The notice issued to it proposed to deny credit on consignment of these goods received from 31st August 1993 to 31st March, 1994 on the ground that the Circular F. No. 263/47/89-CX. 8, dated 23-10-1989 of the Board had said that the certificates issued by Steel Authority of India Ltd. (SAIL for short) and Tata Iron and Steel Co. Ltd. (TISCO for short) were recognised to be documents specified in Rule 57G on which credit could be taken and certificates issued by no other public undertakings would be valid in respect of goods manufactured or procured by it. The Assistant Commissioner confirmed the proposal in the notice. The order having been confirmed by the Commissioner (Appeals), the matter is before us.

2. We have heard the arguments advanced by the counsel for the appellant and the departmental representative.

3. It is necessary to consider the history of the circulars of the Board relating to acceptance for the purposes of Modvat credit certificates issued by steel plants. Proviso under Rule 57G provided that credit shall not be taken unless inputs are received under cover of gate passes, AR 1, bill of entry or "any other document" has been prescribed by the Central Board of Excise and Customs evidencing payment of duty. Even prior to the introduction of the Modvat scheme, the Board had issued instructions relating to acceptance of documents for taking proforma credit under Rule 56A. In its circular No. 75/81 dated 8-12-1981, the Board had noted that representations have been made by SAIL and TISCO that it was difficult for them to get subsidiary gate passes issued by the jurisdictional Superintendent in charge of stockyards and requested that certificates showing payment of duty contained on the delivery challan issued by stockyard may be accepted in lieu of subsidiary gate pass. The Board, after considering the procedure followed by stockyards, felt that it is possible for them to correlate the goods issued by them with the gate pass under which the consignment was received. It has also been decided that certificate given by the stockyard on the delivery challan may be accepted for the purpose of granting proforma credit under Rule 56A. Thereafter it went on to specify the specimen of the stockyard certificate. This certificate has been issued with regard to integrated steel plants -that is in fact the reference cited in the earlier paragraph of the circular. Subsequent to the introduction of the Modvat Scheme, circular dated 10-4-1986 clarified the number of doubts which had been raised with regard to Modvat Scheme. Among the clarifications was one which said that the existing instructions/relaxation relating to supply of goods from stockyards/canalising agencies certifying amount of duty paid would apply for Modvat also. The publication right to Modvat to be issued by the Board in June, 1987 also said, "In the case of iron and steel products sold through stockyards, credit can be taken on the basis of a certificate given by the stockyard recording payment of excise duty on the delivery challan." 4. There are some other circulars which related to endorsement on certificate issued by such stockyards. The circular on which the department relies is stated to have been dated 23-10-1989 and we reproduce the sentences which are relevant to the appeal as follows:- "It

may be pointed out that the facility to issue certificates was granted to M/s. SAIL/TISCO vide Board's F. No. 211/23/79-CX. 6 (Pt) dated 8-12-1981 under Rule 56A. This facility was extended to Modvat Scheme vide Board's F. No. 322/8/86-TRU dated 10-4-1986. No other public sector undertaking has been permitted to issue certificates with respect to indigenous inputs procured/manufactured by them for availing Modvat credit." It then went on to say that a number of public sector undertakings have been permitted to issue certificates in respect of imported materials and referred to Board's instruction which permitted "endorsements of all the above mentioned certificates (which have been accepted as duty paying documents) only once." It ended with an optimistic view that the above explanation will clear all doubts in the matter.

4. The departmental representative's contention that the first circular of 1981 itself applied to certificates issued by SAIL and TISCO is difficult to accept. No doubt, the reason for the circular was a representation by SAIL and TISCO. However, the subsequent paragraph referred to maintenance of account of stockyards, without clarifying stockyards of any particular manufacturer of steel, and concluded that it is not necessary for duty to be paid by stockyards for integrated steel plant to maintain the record prescribed in the earlier letter of the Board. Paragraph 4 which refers to certificate given by the stockyard obviously the first two types referred to in paragraph 3. The fact that the circular was issued on the basis of representation of two primary procedures of the steel plant does not justify the interpretation that it is limited to the certificate issued by the stockyards of these two primary procedures. That is not, in our opinion, what the circular says. None of the other circulars that we have referred to says or suggests that the earlier instructions should be limited to stockyard of SAIL or TISCO. The clarificatory circular of 23-10-1989 therefore is in fact wrong. No public sector undertakings other than SAIL or TISCO have been permitted to issue certificates with regard to indigenous material for availing credit. It clearly ignores the various circulars that we have referred to above. In point of fact, even subsequent circulars of the Board make acceptable "subsidiary gate pass issued by integrated steel plant for crude iron/steel ingots, iron and steel products sold from the duty paid stockyards." Notification 16/94 issued by the Central Government under Rule 57G (that rule having been amended in 1994 substituting the Central Government in place of the

Board specifying documents other than bill of entry etc.) refers in that serial No. 8 of the table to a circular which lists the documents on which credit can be taken, citing the original circular dated 10-4-1986 of the Board.

5. We do not think it proper to ignore the whole series of orders of the Board relating to taking of credit on the basis of the letter of 1989. That letter clearly is in the nature of an operation and ignores the earlier instructions of the Board. Its value, if any, is also nullified by the subsequent circular in 1994. It is not in dispute that Visvesvaraya Iron & Steel Ltd. is an integrated steel plant. The certificates issued by it therefore would be treated on the same basis as certificate issued by SAIL and TISCO. They were therefore valid for taking credit.