Gen. Engineering Works Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-04-2003

Reported in : (2003)(90)ECC843

Judge : A T V.K., P Chacko

Appellant : Gen. Engineering Works

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. Gen. Engineering. Works have filed the present Appeal against Order-in-Appeal No. 68/2003 dated 20.2.03 wherein the Commissioner (Appeals), has held that they were not entitled to take suo moto credit in their RG 23A Part II on the basis of Order-in-Appeal passed by the Commissioner (Appeals).

2. Shri B.L. Narsimhan, learned Advocate submitted that the appellants manufactures steel bars and avail of Modvat credit of the duty paid on the inputs under Rule 57A of the Central Excise Rules, 1944; that during the period September to November 1994, they took Modvat credit of the duty paid on the inputs purchased from SAIL from their stock yard/stockists of TISCO under invoices issued under Rule 57GG by them; that the Assistant Commissioner, Central Excise under Order-in-Original No. 52/95 dated 27.9.95 disallowed the Modvat credit on the ground that the credit was taken on the strength of original copy of invoice and not on the strength of duplicate copy of the invoice; that they filed an Appeal against the Order-in-original and pending disposal of the Appeal

they reversed the entire credit taken by them; that the Commissioner (Appeals) under Order-in-Appeal No. 386/CE/JPR/96 dated 8.11.96 set aside the Order-in-original on the ground that the Assistant Commissioner was not competent to adjudicate the matter involving more than Rs. 50,000 and remanded the matter to the jurisdictional Deputy Commissioner/Additional Commissioner for re-Adjudication; that as there was no duty demand against them after the Order-in-original has been set aside, the Appellants took credit of the reversed amount under their RG 23A Part II on 10,12.96. He, further mentioned that on Appeal preferred by the Revenue/ the Appellate Tribunal vide Final Order No. A/315-348/98 NB dated 26.5.98 held that the Assistant Commissioner has the jurisdiction to decide the matter and remand the matter to the Commissioner (Appeals) for considering the Appeal on merit; that since then, the Appeal has not been decided by the Commissioner on remand.

3. Learned Advocate, further submitted that now the Assistant Commissioner under Order-in-original No. 38/97 dated 3.4.97 has disallowed the credit on the ground that the credit cannot be taken on the basis of the Order-in-Appeal which is neither a prescribed document under Rule 57GG of the Central Excise Rules, 1944 evidencing the specified payment of duty nor did it contain any direction for allowing Modvat credit to the Appellants; that the Commissioner (Appeals) also under the impugned Order has rejected their Appeal holding that proper course of action for the Appellants was to file the refund claim for the duty in respect of credit of RG 23A Part II. Leaned Advocate, finally submitted that the issue involved in the matter stands settled by the Appellate Tribunal; that it has been held by the Tribunal in the case of CCE Lucknow v. Mathura Chemicals Ltd., 2002 (150) ELT 672 (Tribunal) that neither Notification No. 32/94 CE (NT) dated 4.7.94 nor elsewhere Rule 57GG prescribed that Modvat credit could be taken only on the strength of duplicate copy of invoice issued by the Registered dealers; that such a requirement was introduced only by Notification No, 2/95-CE(NT) dated 19.1.95 and as this requirement was not provided in law, Modvat credit cannot be denied on the ground that credit was taken on the strength of original copy of invoice. He also mentioned that it is settled legal position that even when the Appellate Authority has set aside the Order of the Adjudicating Authority and remanded the matter for de novo consideration, amount deposited pending disposal of the

Appeal should be returned to the assessee alongwith interest if there is delay in return. Reliance has been placed on the decision in the case of Sharda Synthetics Ltd. v. CCE, 2003 (57) RLT 626 and Voltas Ltd. v. Union of India, 1999 (65) ECC 879(Del) : 1999 (112) ELT 34 (Delhi).

4. Countering the arguments Shri D.N. Choudhary, learned Senior Departmental Representative, submitted that the issue involved in the present Appeal is not whether the Modvat credit can be availed of on the strength of original copy of the invoice, the issue involved in the present appeal is whether it was open to the Appellants to take the credit in their RG 23A Part II after the Commissioner (Appeals) has remanded the first Adjudication Order in which the Modvat credit was denied to them; that in any case the said Order-in-Appeal passed by the Commissioner (Appeals) has also been set aside by the Tribunal and as a consequence of which the Appellants should have reversed the credit taken by them. .

5. We have considered the submissions of both the sides. We observe that the proceedings initially were initiated against the appellants for denying the Modvat credit as they had taken the credit on the strength of original copies of the invoice issued by the stockyard of SAIL/stockists of TISCO. When the matter reached finally before the Tribunal, it was remanded vide Final Order No. A/315-348/98 NB dated 26 5.98. It was not been disputed by the Revenue that since then the Commissioner (Appeals) has not decided the matter as directed by the Tribunal. Learned Advocate for the Appellants has also brought on record the Tribunal's decision allowing the Modvat credit on the strength of original invoices during the material period holding that the requirement of taking the Modvat credit on duplicate copy of the invoice issued by the dealers under Rule 57GG came into effect only on 19.1.95 vide Notification No. 2/95-CE(NT). Thus we are of the view that the present Appeal is relating to the first matter which stands remanded to the Commissioner (Appeals) and in the interest of justice, both the matters should be decided simultaneously. We, therefore, set aside the impugned Order and remand the matter to the Commissioner (Appeals) with the direction to decide this matter as well as matter remanded under Tribunal's Final Order No. A/315-348/98 NB dated 26.5.98 together after following the principles of natural justice. The Appeal

is thus allowed by way of remand.