

Genesis Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-24-2003

Reported in : (2004)(176)ELT496Tri(Mum.)bai

Judge : S T Gowri

Appellant : Genesis

Respondent : Commissioner of Central Excise

Judgement :

1. Genesis, the appellant, took credit between December 1998 and December 1999 of the duty shown to have been paid on a consignment of cold rolled cold annealed steel coils that it received from the three dealers. Investigation by the department disclosed that the goods cleared on payment of duty by the manufacturers to the three dealers cleared after payment of duty, consisted of such steel coils of different dimensions. Notice dated 3.12.2001 was therefore issued to the appellant and these three dealers, Dhakalia Steel Corporation, Amritlal Korhari and Doshi Enterprises proposing denial of credit on the ground that no duty had been paid and also proposing penalty. The Additional Commissioner, whose order has been confirmed on appeal by the Commissioner (Appeals), confirmed the proposal in the notice, denied credit approximately Rs 1.89 lakhs to the assessee, and imposed on it, a penalty of equal amount. He also imposed a penalty of Rs 10000/- each on the dealers. Hence this appeal.

2. The contention on behalf of the appellant is that the reason advanced by the Additional Commissioner for denial of the credit is that the assessee could not take reasonable precautions to ensure that the inputs or goods on which appropriate verify duty had been paid as required by Rule 173Q(BB) (1). The rules relating to modvat during the period in question, it did not require a manufacture to take any reasonable step to ensure that duty had been paid on the goods, which it proposes to take credit. Rule 173Q(BB)(1) makes liable to penalty the manufacturer who does not take reasonable steps, render the goods liable to confiscation. It is highly debatable whether this rule could be pressed into service. The explanation below the rule provides that the person taking credit on the inputs shall be deemed to have taken reasonable steps if he satisfies himself about the identity and address of the manufacturer or supplier issuing the invoice by one of the three methods specified therein. So far as the penalty is concerned, it has to be concluded that the appellant had taken reasonable steps. It is not the case of the department that the dealers of the goods werenot functioning in the status at the addresses given by them.

3. S far as taking credit is concerned, I accept the departmental representative's contention that where the duty is not shown to have been paid, as in this case, credit could not be taken for the simple reason that credit is only taken on the duty paid and cannot be taken where it is not paid. Had the notice been issued within the normal period of limitation of one year denial would have been in order.

However, the notice was issued two to three years after taking of credit and therefore extended period of limitation cannot be invoked.

There is nothing to justify invoking the extended period. It is not alleged that the appellant knew, or could have known from the invoices that it received from the dealers -- that they had not received duty paid goods which they sent to the appellant. The invoices that the appellant had received from these dealers clearly indicate, in the appropriate column the amount for the periods, description of the goods i.e. steel alloy coils, name, their manufacturers, date of its invoice, quantity and assessable value. They did not, it is true, give details of the dimensions of the coils. At the same time, these invoices did not furnish the dimensions of the coils

supplied by the dealers to the appellant. Unless, therefore, there is material to show that the appellant was aware that the steel that it received was of the dimensions different from that mentioned in the invoices of the manufacturer to the dealer, and there was therefore no evidence to payment of duty, the extended period of limitation could not have been invoked. The notice does not impute any such knowledge to the appellant. Although the notice does not contain existence of facts of sub Rule (2) of Rule 571, justify invoking the extended period. All it says that the assessee failed to take all reasonable steps. It is not clear what reasonable steps other than identifying the manufacturer, the appellant was expected to take. It could not be expected to go beyond the dealer of the manufacturer and verify in each case the details of the transaction between the manufacturer and the dealer.

This is not provided for in the rule, it is also humanly impossible to do so. Credit can not be taken within a reasonable period in this manner. It is also to be noted that none of the statement of the dealers or from the assessee's own employee have shown that the assessee took credit knowing that duty had not been paid on the goods.

The extended period of limitation therefore could not have been invoked.

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