Lloyds Metal Engineering Ltd. and Vs. Commissioner of Cen. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-13-2003

Judge : J Balasundaram, A M Moheb

Appellant : Lloyds Metal Engineering Ltd. and

Respondent : Commissioner of Cen. Excise

Judgement :

1. By the impugned order, the Commissioner of Central Excise, Mumbai has confirmed a duty demand of Rs. 55,35,976/- representing modvat credit wrongly availed on H.R.Steel coils on the strength of Central Excise invoices issued by M/s. Lloyds Steel Industries Ltd. Wardha during the period 12.3.97 to 26.3.97 without physical/actual receipts of the consignments covered under such invoices and has imposed a penalty of equal amount on the assessee company, alongwith penalty of Rs. 5,50,000/- on Shri Pankaj Desai, the Joint General Manager of the company. The finding is based upon the following:- (i) The non accountal for the receipt of the 98 consignments of H.R. coils in question in their regular security/stocks registers but only in separate registers viz. Register No.7.

(ii) Out of the number of vehicles stated to have transported the consignments from their Murbad unit to Dombivli, 13 vehicles were tankers, 3 vehicles were four wheeled L.MVs having Rear Laden weight capacity of less than 4 M.Tons and the other vehicles were six wheelers having rear laden weight capacity less than the quantity purported to have been transported from Murbad to Dombivli; (iii) Absence of proof of payment of octroi on these consignments on their receipt from

Murbad.

2. We have heard Shri V.K. Jain, the Id.Chartered Accountant for the appellants and Shri Shukla, Id.SDK for the Revenue and record our findings hereunder below: - On the visit of the Central Excise Officers to the assessee's factory on 24/12/97, certain registers were recovered including register No.8 that is "Raw Material Inward Register" maintained by them for the period from 1.4.96 to 30.3.97 for the receipt of all raw materials and other goods required in their factory. Register No.7 "Receipt Raw Material" was also maintained for the period from 12th to 26^th March 1997 in which there were 98 entries showing receipt of raw materials ie. slitted H.R.coils and the receipt of raw material shown in Register No. 7 was not reflected in the Register at Sr.No.8. Each entry in Register No.7 carried an Annexure II Challan Number and the modvat documents under which credit was availed also indicated Annexure II Challan number from which it could be identified that the said Central Excise Invoices were issued by M/s.Lloyds Steel Industries Ltd. Wardha. The explanation of Shri Maruti R.Walekar, Material Asstt.Officer in his statement dated 24.1.97 is that he was maintaining account of incoming raw materials in one register and in addition, he maintained another Register for the period 12.3.97 to 26.3.97 and this register showed materials received from Murbad. Shri Pankaj Desai, Joint manager of M/s. Lloyds stated that their company was engaged in the manufacture of Cold Rolled steel strips for which Hot rolled coil was the raw materials, H.R. coils were procured from M/s. Lloyds Steel Inds.Ltd. and the same were received in Dombivli plant in width from 800 to 1200 mm and were sent directly to cutters ie. their own Pipe Division at Murbad and other unit in Taloja for further slitting in various widths ranging from 300 mm to 450 mm, Register No.7 contained details of 98 consignments of H.R.coils, slitted at Murbad which was transported to Dombivli from Murbad by 3 different transporters. The explanation that the separate register was being maintained for recording receipts from their Murbad plant from preventing any mix up from materials coming from Taloja is plausible. Moreover, the Adjudicating authority has himself held that maintaining separate accounts in respect of the goods to be processed and supplied to their factory at Murbad is not conclusive proof that the inputs were not in fact received but still relies upon the maintenance of a separate register to arrive at the conclusion of non receipt of inputs, holding

that the appellants have not shown any relevance for maintaining a separate register.

However, we find that the disputed consignments were entered in the RG.23A Part I & II Register in chronological order alongwith other inputs in respect of which there is no allegation of wrong availment of modvat credit. Shri Walekar also confirmed in cross examination that the inputs were received and examined by him before entering them in the Register, and that there were no receipts of material from Murbad plant prior to 12.3.97 and subsequent to 26.3.97.

Internal records having of receipts and consumption in the form of coil cards, issue slips etc. were verified at the time of search and no discrepancy in consumption of inputs was noticed. There is nothing on record to show that the appellants received inputs from any other source so as to be able to manufacture their final products. There is also no evidence on record that the consignments in question were found elsewhere. Murbad unit was also visited and records verified as to whether coils were slitted and sent to Dombivli and nothing incriminating has been found as seen from the statement of Shri N.Hariharan, Asstt.Manager, Excise of the Murbad plant. Records seized from the Murbad plant have not been relied upon against the appellants. In the above circumstances, we hold that the maintenance of separate register is not sufficient proof of non receipt of inputs in the appellants' factory.

Regarding the finding of the Commissioner that the consignments in dispute could not have been transported on the vehicles on which they are stated to have been transported, the appellants explained that transporters are known to carry load in excess of load capacity of the vehicles. Shri Agarwal, Director of the two transport companies viz.

M/s. Adhunik Transport Organization Pvt.ltd. and M/s. Atash Transport Pvt.ltd. has explained in his affidavit that many times there were errors in writing the truck numbers in the lorry receipts. He has confirmed that the disputed consignments were transported by his companies and that he has received transportation charges for the same.

This evidence has not been controverted. He has also deposed that several documents were seized from his premises during the course of investigation. There is no material to show that the transporters' records do not show the transport of the goods in question during the period in question. Therefore, the mere fact that the actual weight of the 98 consignments of H.R.Coils was in excess of the rear load capacity of the vehicles cannot justify the conclusion that no goods were carried on those vehicles.

3. The non production of octroi receipts for transport of these consignments is also not sufficient to hold that the goods were not actually transported as held by the Tribunal in the case of Commissioner of Central Excise vs. Dashmesh Casting (P)Ltd. [2000(40)RLT 1077].

4. Further, the report of the Cost Audit appointed by the Commissioner on Special Audit, conducted for the period in dispute clearly shows that the inputs on which credit was availed were physically received and consumed for production, except for the invisible loss being less than 1%. This report has been brushed aside by the Commissioner on the ground that the audit was conducted on the basis of records made available to the Auditors and facts of suppression or manipulation were not brought to their notice. We are of the view that Cost Audit Report cannot he discarded on the above grounds, as we find that the seope of the excise audit included enquiry on source of receipt of raw materials, whether there has been suppression on production/clearance, important modus-operandi etc.

5. In the light of the above discussions, we hold that the burden of proving non receipt of inputs on which modvat credit was availed has not been discharged by the Revenue on whom such burden lies. We, therefore, extend the benefit of doubt to the appellants, set aside the duty demand and penalties and allow the appeals.