

Commissioner of Central Excise Vs. Trinetra Texturisers Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-03-2003

Reported in : (2004)(166)ELT384Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Trinetra Texturisers Pvt. Ltd.

Judgement :

1. These are Revenue's appeals against the order-in-appeal passed by the Commissioner of Central Excise (Appeals), Surat. The facts in brief are that the respondents had taken modvat credit on the basis of duty paying documents received from their suppliers. Subsequently, the suppliers had issued credit notes in favour of the respondents at the rate of Rs. 2/- per kg. On noticing this fact, the departmental authorities have coerced the respondents to debit the input credit amount, equivalent to the duty redemption consequent to value reduction on the inputs, which occurred consequent to such credit notes. The respondents, complying with these directions, did reverse the corresponding amounts, as directed. There was no correction in the duty paying documents requiring the said correction in the credit amount.

Therefore, the respondents suo moto took credit of the reversed amount.

Proceedings through show cause notices were initiated against the respondents by alleging that the respondents cannot re-credit the modvat amount suo moto, because there is no corresponding duty paying documents to entitle the claim of this suo moto credit. The respondents succeeded before the Commissioner (Appeals) and the Revenue's instant appeals against the common order are directed against the relief granted by the Commissioner (Appeals).

2. In the grounds of appeals, it has been claimed that there is no provision to take credit on the basis of credit notes issued by the suppliers towards the inputs supplied. In the absence of duty paying documents to support such credit, the impugned order-in- appeal may be set aside.

3. I note that the grounds in the appeal are totally misplaced. The departmental authorities have committed highhandedness and illegality by coercing the respondents to reverse the modvat credit on a proportionate basis with reference to the credit notes issued by the input supplier. The effect of the credit note is that the purchaser has received the input at a cheaper price equivalent to the amount of credit note. Whether on account of issue of such credit notes, the assessable value of the input had to be scaled down and whether on such scaling down, the duty that has been paid by the supplier, as reflected in the invoices and the other statutory records of the supplier, has to be scaled down or not is a matter that has to be determined by the Central Excise authorities in charge of the suppliers unit. There is no evidence on record to suggest that such exercise was in fact carried out and such a duty reduction in respect of the consignments received by the respondents has actually occurred and the corresponding duty paying documents had been corrected. This having not been done, the entire exercise at the end of the purchaser factory for cutting down the credit, was without the authority of law. It has not been demonstrated in the appeal as to how the original exercise of pruning down the credit, amount is supported by the provisions of the law. It is well settled legal position that the Central Excise authorities in charge of factories receiving inputs, have no jurisdiction to re-assess the duty on inputs received (Kerala State Electronic Corporation v.CCE, Kochi 1996 [84] ELT 44 [Tribunal]). The illegal and coercive reversal of credit: on one hand, at the same time claiming that the respondents lack the authority to suo moto claim back the said credit on

the other hand, tantamounts to adding insult to injury. The approach also shows that, instead of correcting the illegality omitted by the department, the departmental authorities, by filing these instant appeals, are attempting to perpetuate this illegality, which cannot be supported.

4. Besides the basic ground in the appeal that the respondents have taken a suo moto credit itself is a misstatement inasmuch as the credit taken was only to restore the actual credit available on the basis of duty paying documents and there was no effort to take credit in excess of the credit mentioned in the duty paying documents. The colour and thrust of the appeals of the Revenue being totally misleading and without having support: of law, the same are rejected.

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