Commissioner of Central Excise Vs. Zeto Engg. P. Ltd. and Shri Amrik

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-2004

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Zeto Engg. P. Ltd. and Shri Amrik

Judgement :

1. In both these appeals which hare been directed against common order-in-appeal, the issue relates to the denial of modvat credit to the respondents on the GP sheets. The adjudicating authority disallowed the modvat credit of the disputed amount of Rs. 3,44,398/- on these sheets and also imposed penalty of equal amount on the company appellant No. 1 and further imposed penalty of Rs. 75,000/- on its Managing Director, appellant No.2. The Commissioner (Appeals) has however reversed that order in toto.

2. The learned JDR has contended that the GP sheets had never been used by the respondents in or in relation to the manufacture of their final products i.e. parts of tractors supplied to HMT and as such they could not claim modvat credit on the same. They in fact used HR/CR sheets in the manufacture of their products which they brought into the factory in a clandestine manner. Therefore, the impugned order of the Commissioner (Appeals) deserves to be set aside.

3. On the other hand, the learned Counsel has contended that there is no evidence on the record to substantiate the above said arguments of the learned

JDR and that the invoices vide which the GP sheets were purchased by the respondents, were submitted to the Range Officer from time to time for defacement and RT 12 returns were also finally assessed by the Department without any objection. He has also contended that the duty demand raised by the Department by disallowing the modvat credit, is time barred as the extended period could not be invoked legally.

4. I have heard both the sides and gone through the record. The perusal of the record shows that the respondents are engaged in the manufacture of tractor parts. The duty paid nature of the GP sheets which the respondents purchased from a registered dealer, had not been disputed by the Department. The only use of these sheets had been contested by the Department and that too verbally. No tangible evidence whatsoever had been brought on record to prove the non-user of these sheets by the respondents in or in relation to the manufacture of the final products i.e. tractor parts. No evidence has been also collected and produced by the Department to prove clandestine removal of these sheets by the respondents and in turn clandestine purchase of the HR/CR sheets. It is also quite evident from the record that the respondents had been submitting the invoices regarding the purchase of GP sheets to the Department and the Range Officer had been defacing the same from time to time. Even the RT 12 returns submitted by the respondents had been assessed during the period in dispute without any objection. Therefore, it is difficult to accept the bald allegations of the Department regarding the non-user of GP sheets by the respondents in or in relation to the manufacture of the final products.

5. Apart from this on the face of it, the demand raised by the Department is time barred. The period for which the demand has been raised by disallowing modvat credit is from February 97 to March 99, while the show cause notice of six months. All the facts detailed above were within the knowledge of the Department and the respondents could not be said to be guilty of suppression of any material facts from the Department. It is well settled that extended period is not invokable when assessment returns submitted by the assessee had been assessed. In this context reference may be made to the judgment rendered in Ganges Soap Works P. Ltd. vs. CCE 2002 (146) ELT 740 by the Tribunal which has been upheld by the Apex

Court as reported in 2003 (154) ELT A 234 (Court Room Highlights.) 6. In view of the discussion made above, in my view the Commissioner (Appeals) has rightly reversed the order-in-original of the adjudicating authority and allowed modvat credit for the disputed amount to the respondents. The impugned order passed by the Commissioner (Appeals) is, therefore, upheld. The appeals of the Revenue are dismissed.