Cce Vs. Arpit Cement (P) Ltd.

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SooperKanoon Citation : sooperkanoon.com/34480

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-09-2004

Reported in : (2004)(94)ECC110

Judge : A T V.K., P Chacko

Appellant : Cce

Respondent : Arpit Cement (P) Ltd.

Judgement :

1. The respondents are engaged in the manufacture of cement falling under Chapter 25 of the CETA Schedule. Prior to 1.4.98, they were availing Modvat credit on inputs and clearing their final product on payment of duty. From 1.4.1998, they started clearing their final product without payment of duty by availing the exemption under Notification No. 16/97-CE dated 1.4.97 (as amended) vide their declaration filed under Rule 173B. Rule 57-H (7) of the Central Excise Rules, 1944 required that any Modvat credit taken in respect of inputs lying in stock and inputs used in final product lying in stock on the effective date of option for full exemption from duty in respect of final product be reversed or an amount equivalent to such credit be deposited. The original authority found that the respondents had not reversed such credit and accordingly confirmed against them a demand of Rs. 64,676 under Rule 57I of the aforesaid Rules. That authority also imposed a penalty of equal amount on the party under Rule 173Q of the said Rules. The party preferred appeal to the Commissioner (Appeals), wherein they disputed the lower authority's quantification of input credit. The appellate authority accepted the

party's submissions with regard to the quantities of inputs and the finished goods in stock as on 31.3.98 and allowed their appeal. Hence, the present appeal of the Revenue.

2. We have heard the SDR for the appellant. No representation for the respondent. The notice of hearing issued to them appears to have been returned undelivered.

3. It appears from the records and the submissions of the DR that the relevant show-cause notice had alleged that the respondents had contravened the provisions of Rule 57H (7) by not reversing the Modvat credits (totalling to Rs. 64,676) taken in respect of 54.450 MTs of clinker (input) and 3300 HDPE bags (input) present in stock as on 31.3.98 and also in respect of the inputs contained in 223.5 MTs. of cement (final product) present in stock as on the said date. The original authority upheld the allegation and confirmed the demand of Rs. 64,676 against the party under Rule 57I. Before the first appellate authority, it appears, the party pleaded that the quantity of clinker in stock as on 31.3.98 had not been correctly determined by the original authority. This plea has been accepted by the appellate authority on the basis of copies of the relevant pages of Form-IV Register produced by the party. As regards the quantity of finished goods in stock as on 31.3.98, it was pleaded by the party before the first appellate authority that 215 MTs out of 223.500 MTs of cement was the production of the previous year (1996-97) in respect of which (it was claimed) no input-credit had been availed of. This plea has also been accepted on the basis of a certificate dated 1.3.2000 issued by Punjab National Bank which certified that the stock of cement in pledge account of the party was 215 MTs as on 31.3.97 and the said quantity had notbeen physically changed/replaced or otherwise rotated in any way till the date of issue of the certificate. The appellate authority accordingly found that only 8.5 [223.5 minus 215] MTs of cement were in actual stock as on 31.3.98. It was accordingly held that the credit taken on inputs contained in this quantity of cement required to be reversed. In the present appeal, the appellant has challenged the authenticity of the copies of the relevant pages of Form-IV Register relied on by the Commissioner (Appeals), on the ground that the document did not bear the signature of any officer of Central Excise.

The appellant has also stated that, even in the RT-12 Return filed by the party for March 1998, they have shown the closing balance of clinker as 54.450 MTs. Regarding the quantity of finished goods in stock as on 31.3.98, the appellant has alleged that, as per the RT-12 Returns filed by the party during 1996-97, they had availed Modvat credit on inputs used in the manufacture of the aforesaid quantity of 215 MTs of cement and, therefore, they were required to reverse credit in respect of the entire quantity of 223.5 MTs of Cement.

4. We find that, on the basis of documentary evidence adduced by the party at the first appellate stage, Ld. Commissioner (Appeals) has found certain errors on the part of the original authority in quantifying the inputs and finished goods in stock as on 31.3.98.

Neither the Form-IV Register nor the Certificate of Punjab National Bank was before the original authority when it quantified the inputs and finished goods for the purpose of invoking Rule 57H (7) against the party. The Commissioner (Appeals) had no power of remand, either.

5. In view of the above position, we are of the view that the quantity of inputs in stock as on 31.3.98 and the quantity of inputs used in the final product in stock as on the said date have to be correctly re-quantified by the original authority after examining the documentary evidence produced by the party and considering the submissions made by them in support of their defence against the demand in question.

Accordingly, we set aside the orders of both the lower authorities and direct the original authority to take a fresh decision in the matter and pass a speaking order after duly considering the evidence and submissions of the party. Needless to say that the party be given a reasonable opportunity of being heard.