

Nirma Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-18-2004

Reported in : (2004)(95)ECC671

Judge : A T V.K., P Chacko

Appellant : Nirma Ltd.

Respondent : Cce

Judgement :

1. The appellants are engaged in the manufacture of Detergent Cakes, Detergent Powder, Toilet Soaps etc. and are availing benefit of Cenvat credit on inputs used in or in relation to the manufacture of their final products. Soda ash is one of their inputs. In the year 1998, the appellants imported 4750 MTs of soda ash through Mumbai port. Bill of Entry No. 1800 dated 25.6.98, which was filed for clearance of the goods for home consumption, was assessed provisionally by Mumbai Customs and accordingly the duties of Customs including CVD were paid on 17.7.98. The consignment was split into three parts, which were directly delivered from the dockyard to three factories of the appellant company, one at Mandali (Gujarat), another one at Kanpur (U.P.), and the third one at Pithampur (M.P.). In the Pithampur unit, Modvat credit of CVD of Rs. 17,43,596 on a quantity of 1584 MTs of soda ash was taken by the appellants on 22.8.98 on the basis of a certified copy of triplicate copy of the Bill of Entry. The department issued a show-cause notice to the party proposing to disallow the credit to them on the ground that attested photocopy of triplicate copy of Bill of Entry was not a prescribed document under

Rule 57G of the Central Excise Rules, 1944 for the purpose of Modvat credit. The notice also proposed to impose penalty on the party. Another show-cause notice was also issued to the party for denying them Modvat credit of Rs. 1,64,585 which was taken on the strength of Certificate 'A' dated 5.4.99, issued under Rule 57E, of payment of differential amount of CVD upon finalisation of assessment of the Bill of Entry. In this connection, it was alleged that the credit taken on the basis of the certificate was not admissible as the claim for Modvat credit of CVD paid on provisional assessment itself was allegedly not admissible. The second show-cause notice also proposed to impose penalty on the party. The proposals in both the show-cause notices were contested. The original authority, which adjudicated the disputes, disallowed both the credits to the party and imposed on them a total penalty of Rs. 1,15,000. The appeal preferred to the Commissioner (Appeals) against the decision of the original authority did not succeed. Hence, the present appeal.

2. In the impugned order, Ld. Commissioner (Appeals) has disallowed the credit of Rs. 17,43,596 to the assessee on two grounds viz: (i) A certified photocopy of triplicate copy of Bill of Entry was not one of the specified documents under Rule 57G(2) for Modvat purpose; (ii) The assessee had not followed the procedure laid down in Board's Circular No. 96/7/95-CX. Dated 13.2.95. In connection with the first ground, Ld.

Commissioner has relied on the Tribunal's decision in CCE v. Shree Ram Switchgears Ltd., 2001 (131) ELT 116 (T). On the question of admissibility of the credit of Rs. 1,64,585, Ld. Commissioner (Appeals) has held that the Rule 57E certificate is not correctable to any of the documents prescribed under Rule 57G(2) and hence cannot be accepted for Modvat purpose.

3. Heard both sides. Ld Consultant challenged the finding that the credit of Rs. 17,43,596 was taken on the basis of a certified photocopy of triplicate copy of Bill of Entry. He submitted that the credit was actually taken on the basis of the original triplicate copy of Bill of Entry and not on the basis of any photocopy thereof. It was also argued that the Board's Circular dated 13.2.95 relied on in the impugned order was not applicable to the case. Ld. counsel submitted that it was

not in dispute that the goods had suffered CVD and had been received in the factory and used in the manufacture of final product and, therefore, there was no justification for denying credit of the CVD to the assessee. The Bill of Entry was filed by the Head Office of the appellant company and the same was duly endorsed in favour of their factories at Mandali, Kanpur and Pithampur. The declarations filed with the Bill of Entry were also endorsed by the proper officer of Customs.

Hence, Ld. Consultant argued, there was no reason whatsoever for denial of the credit to the assessee. Consultant relied on the Tribunal's decision in *Bhor Industries Ltd. v. CCE, Pune*, *ABS Industries Ltd. v. CC and CE, Vadodam*, 2002 (51) RLT 755. Regarding the credit of Rs. 1,64,585, Ld. Consultant submitted that Rule 57E certificate itself was a specified document under Rule 57G for Modvat purpose and, therefore, the denial of the credit on the ground that the certificate was not correctable to any specified document under the latter rule was illegal. It was further submitted that, as the assessee had correctly taken the credits, no penalty was liable to be imposed on them.

4. Ld. SDR submitted that, though triplicate copy of Bill of Entry was a specified document under Rule 57G for Modvat purpose, any photocopy thereof was not so specified. In respect of imported consignment being split into parts at Customs dockyard for the purpose of clearance to different factories of the importer, it was important in the Modvat context that the relevant declarations filed with the Bill of Entry were duly endorsed by the proper officer of Customs as prescribed in the Board's circular. In the instant case, the declaration pertaining to (sic, to) the goods removed to the Pithampur factory did not show any such endorsement by the proper officer of Customs. With regard to the credit of Rs. 1,64,585, the DR reiterated the view taken in the impugned order. The Consultant for the appellants, in his rejoinder, asserted once again that the declaration had been endorsed by the proper officer of Customs.

5. We have examined the records and considered the submissions. The Modvat credits in question are in respect of CVD paid on 1584 MTs of soda ash cleared under Bill of Entry dated 25.6.98 filed by the Head Office of the appellant-

company. A copy of this Bill of Entry is available on record and we have perused the same. We have seen on the reverse side of the Bill of Entry an endorsement by the importer thus: "goods to be dispatched to respective factories as per details attached in three declaration". Copies of the three declaration are also available on record. The Bill of Entry on its face carries endorsements indicating that proportionate credits of CVD were taken by the importer in respect of the quantities of soda ash received in their factories at Mandali, Kanpur and Pithampur. The credit taken in the Pithampur unit on 22.8.98 was to be extent of Rs. 17,43,596. This was sought to be denied by the authorities below on the main ground that the assessee had not followed the procedure laid down in the Board's Circular dated 13.2.95. The document at page No. (20) of the appeal file is a copy of the declaration which pertains to the consignment of 1584 MTs of soda ash received in the Pithampur unit, The Consultant for the appellants has asserted that this declaration carries the requisite endorsement by the proper officer of Customs and the DR has contested this claim. We note that, in this declaration, there is some matter in illegible English stamped at the bottom, which has not been attested by any identifiable officer of Customs. The matter appears in two horizontal lines, between which there is somebody's initial without name, designation, seal or any other mark of identification. Such matter cannot be as such treated as an endorsement by the proper officer of Customs, nor are we inclined to say for certain that the declaration was not endorsed by the proper officer of Customs. It must be possible for the original authority to check the records and ascertain whether the declaration was actually endorsed by the proper officer of Customs.

Appellants have asserted that the credit of Rs. 17,43,596 had been taken on triplicate Bill of Entry rather than certified copy thereof.

In our view, this claim also needs to be carefully examined by the original authority. In other words, admissibility of the above credit shall be adjudicated upon afresh. Consequently, admissibility of the credit of Rs. 1,64,585 also will enter into de novo adjudication as the relevant show-cause notice has proposed to disallow this credit on the main ground that the Rule 57E certificate of payment of differential duty upon finalisation of assessment of Bill of Entry cannot be accepted

for Modvat purpose on account of inadmissibility of the credit (Rs. 17,43,596) originally taken upon provisional assessment.

Therefore, without going into the merits of the rival submissions, we set aside the orders of both the lower authorities and direct the original authority to adjudicate the entire case afresh having regard to the observations contained herein, particularly our direction with regard to the declaration. Needless to say, the assessee should be given a reasonable opportunity of being heard.

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