Cce Vs. Vikram Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-20-2004

Reported in : (2004)(97)ECC588

Judge : R K Jeet

Appellant : Cce

Respondent : Vikram Industries

Judgement :

1. This appeal filed by the Revenue is directed against the Order-in-Appeal No. 41/2000 (CBE) (MJ) dated 11.5.2000 passed by the Commissioner of Customs & Central Excise (Appeals) Trichy, by which the Commissioner has allowed the appeal of the party holding that the assessee-respondents are eligible to the benefit of Modvat credit on inputs procured for conversion on job charge basis.

2. The brief facts of the case are that the respondents are manufacturers of electrical stampings. They received raw materials viz.

HR electrical silicon sheets from various parties. They have also procured raw material from M/s Ellen Industries Coimbatore for conversion into electrical stampings on job work basis. On receipt of the materials they availed Modvat credit on the basis of five invoices issued by M/s Ellen Industries and utilized the same for payment of duty on their finished products. The department took the view that in terms of Notification No. 32/94 dated 4.7.94 as amended by Notification No.

14/95 dated 20.4.95 the invoice issued by the dealer is an eligible document for availing Modvat credit only when there was sale and inasmuch as in the instant case there had been no sale in the invoice issued by M/s Ellen Industries, the credit was inadmissible. No show cause notice was issued as the party waived the right of issue of show cause notice. Adjudication order was accordingly passed confirming the demand of duty and imposition of penalty, vide Order-in-Original No.165/96 dated 25.10.96. Aggrieved by the said order, the party moved the Tribunal and Tribunal vide Final Order No. 2404/98 dated 18.11.98 accepted their arguments to the effect that the order of the Commissioner was not a speaking order and the matter was remanded for de novo consideration. In the de novo proceedings, the Additional Commissioner confirmed the duty demanded and appropriated the amount already paid. The appellants filed appeal against that decision before the Commissioner (Appeals), who by the impugned order allowed the appeal of the party. Revenue aggrieved by the said order of the Commissioner (Appeals), has come in appeal.

3. Shri A. Jayachandran Learned JDR appeared for the Revenue and reiterated the grounds of appeal and submitted that the transaction between the supplier of the goods and the job worker is not a sale. The goods are supplied to job worker free of cost on the term that the final products manufactured are returned to the supplier and the job worker is entitled for job charges only and there was no sale involved in the present transaction between the appellant and the ownership of the goods is not transferred. Therefore, the documents covering the transaction cannot be considered as eligible Modvat documents in terms of Notfn. No. 32/94-CE (NT) as amended by Notification No. 14/95-CE (NT) dated 20.4.95 which prescribes that "invoice means a document issued by a Registered person for sale of goods and which contains such details as are prescribed by the Board. He has also invited my attention to the order of the Larger Bench of the Tribunal in the case of Balmer Lawrie & Co. Ltd., 2000 (116) ELT 364 regarding the powers of the Tribunal. He has also cited the Judgment of the Hon'ble Apex Court in the case of Commissioner of Wealth Tax v. Smt. Hashmatunissa Begum, 1989(40) ELT 239 (SC) regarding rule of construction when there are two reasonably possible views.

4. Shri C. Seethapathy, learned Counsel appeared for the assessee-respondents invited my attention to the finding portion of the Order-in-Appeal from para 4 onwards wherein the lower appellate authority has referred and relied upon a number of orders issued by the Commissioner (Appeals) allowing Modvat credit in such facts and circumstances. The learned Counsel also invited my attention to the order of the Tribunal in the case of Bhupendra Sales (P) Ltd., 1994 (72) ELT 373 (T) which has been relied upon by the lower appellate authority in the impugned order. He has also invited my attention to the Board's Circular No. 267/63/97 dated 9.9.97 under which the Board has clarified that "the definition of Sale and purchase under Section 2(h) of the CE Act, 1944 means transfer of possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration". He further submitted that the issue is no longer res integra as the issue has already been decided in favour of the assessee by this Bench of the Tribunal in the case of CCE, Coimbatore v. Achutha Vulcanising Cement Pvt. Ltd., 2001 (132) ELT 509 which has relied upon the Board's Circular cited supra. He therefore prays for rejection of the Revenue appeal.

5. I have considered the submissions made by both the sides and gone through the case records and the case laws cited. In this case, the assessee-respondents have procured the raw material from M/s Ellen Industries, Coimbatore, for conversion into electrical stampings on job work basis. The assessee-respondents took Modvat credit on the basis of five invoices issued by the supplier of the goods and utilized the same for payment of duty on the finished goods. The account of both the parties reflected payment of labour charges to the assessee-respondents. The only objection of the Revenue for allowing Modvat Credit is that, there was no sale involved in the transaction between the supplier and the assessee (job worker). I observe that the question whether Modvat Credit of duty paid can be taken by the conversion agents on the strength of the invoices issued under Rule 57G by the depot of SAIL with respect to semies/billets was considered by the Hon'ble High Court of Jammu & Kashmir and pursuant to the order of the Hon'ble High Court, the Board has clarified the matter vide Circular No. 267/63/97 dated 9.9.97 to the effect that definition of 'Sale and purchase' under Section 2(h) means any transfer of possession of goods by one person to another in the ordinary

course of trade or business for cash or deferred payment or other valuable consideration.

Therefore, it was clarified by the Board that Modvat credit cannot be denied to the conversion agents on the strength of invoice issued by the SAIL depots under Rule 57G of the CE Rules, 1944. I note that this Bench had occasion to consider identical issue in the case of CCE, Coimbatore v. Achutha Vulcanising Cement Pvt Ltd., 2001 (132) ELT 509 (Tri-Chen) wherein, relying on the Circular issued by the Board (supra), the Tribunal decided the issue in favour of the assessee. I also note that the relevant Notification did not prescribe sale of the goods as a condition for issue of any purchase/sale document. In view of above, I do not find any reason to take a different view than what was taken by this Bench in the cited case. I, therefore, hold that the impugned order is legal and proper and I uphold the same and reject the Revenue appeal as devoid of merits. Ordered accordingly.

6. The operative portion of this order rejecting the Revenue appeal was pronounced in the open Court on 20.5.2004.