

Star Insulation Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-28-2004

Reported in : (2004)(177)ELT274Tri(Mum.)bai

Judge : A M Moheb

Appellant : Star Insulation

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal arose out of the order of the Commissioner (Appeals). In the impugned order the Commissioner upheld the order of the lower authority who confirmed a demand for Rs. 1,05,880/- under Rule 571 read with Section 11A, imposed an equal amount of penalty under Section 11AC and demanded interest under Section 11AA of the Central Excise Act. The demand itself arose out of alleged wrong availment of modvat credit.

The period in dispute is April 1992 - March 1993.

2. Briefly the facts are that the appellant is a manufacturer of varnishes and thinners. The appellant was working under modvat scheme but opted out of it on 1.4.1993 in order to avail of the SSI exemption under notification 1/93-CE. He reversed an amount of, Rs. 10,509/- being the credit involved in the input lying in balance as on 31.3.1993.

3. Verification of private records of the appellant revealed that he had additional stock of inputs over and above the ones declared by him to be lying in stock at the time of reversal of credit. Modvat credit involved in these inputs was Rs. 46997/-. The allegation is that the appellant deliberately did not declare these inputs lying in the factory in order to avoid reversal of credit to the extent. The appellant's contention is that the so called inputs found in their premises was purchased from open market and were not covered under any gate pass. There was no way how they could have taken any credit in respect of these inputs. The facts that they were lying in the appellants premises does not indicate that the credit of duty paid on these goods was taken. The question of reversal of credit as ordered by the lower authorities did not arise.

4. It is also alleged that the appellant received duty paying documents without actually receiving the goods covered under such documents. The contention that the goods were not received in the appellant's factory was based on the fact that the receipt of such goods was not entered in their private records which was normally done by the assessee. The amount involved in Rs. 39,949.89/-. The contention of the department is that the appellants availed of the benefits of modvat credit only on the basis of statutory documents without receiving the inputs.

It is also alleged that the appellant availed credit of Rs. 4,313/- vide RC 23A part II without a corresponding entry in part I, of the said register. The appellants also did not produce duty paying documents (original nor a photocopy).

The fourth dispute pertains to availment of credit of Rs. 14,961/-. The appellant received 583 kgs. of Toulene and 1032 kgs. of Benzene on which duty of Central Excise was paid. But these inputs were used in the manufacture of thinners which are exempt from payment of duty.

Credit of Rs. 14,961/- was wrongly availed according to the Department.

This was not contested.

The fifth dispute pertains to credit of Rs. 7,301.47 which was taken even before the receipt of subsidiary certificates. According to the Department, such procedure is not authorised under the Rules and therefore credit taken is disallowed.

The sixth and the last issue pertains to wrong credit of Rs. 318/- and Rs. 48/- taken in RG23A Pt.II dated 6.6.1992 on the strength of GP1 without first entering the quantity so received under the gate pass in RG23 Pt.I. Credit was denied on this ground.

6. The learned advocate contested both the demands and the penalty imposed on the appellants.

7. With regard to the various contentions of the department, the Id.advocate agreed that the denial of credit of Rs. 14,961 A- as brought out herein above was correct and therefore not contested.

8. In regard to credit of Rs. 46,997/- and Rs. 39,949.89/-, the Id.advocate argued that in respect of the first mentioned amount the department assumed that the appellants have availed of credit without any evidence. The inputs in question were not received under gate passes. The inputs therefore are not modvatable. The question of reversal of credit does not arise at all as the appellants have not taken any credit on these inputs. I agree with the appellants' contention. In regard to Rs. 39.949.89 the department demanded reversal of this amount on the ground that inputs concerned were not received in the appellants' factory as such receipts are not shown in their private records. The fact is that the goods in question were received under duty paying documents and no allegations can be made that they were not so received because entries were not made in private records. I agree with the Id. Advocate's contention. This amount of Rs. 39,949.89/- is not demandable. In regard to demand for reversal of credit of Rs. 4,313/- it is argued that the department has sought to demand this amount on the ground that a relevant entry was not made in part I of RG 23A but credit was taken in part 11 of the register. I agree with the Id. Advocate's contention that credit cannot be denied on this ground (*Demosha Chemicals v. CCE, Surat 1999 (107) ELT 443 [T]* relied upon).

In regard to the department's contention that Rs. 7,301.47 taken as credit even before the receipt of subsidiary certificate the advocate contended that it is a mere irregularity (CCE v. Amal Rasayan Ltd. 1993 (68) ELT 446 (T) relied upon). I agree with the advocate's contention.

Lastly, in regard to the credit of Rs. 318/- and Rs. 48/- the advocate contended that these amounts v/ere demanded on the ground that credit was taken in part 11 RG23A without a corresponding entry in part 1. I agree with the contention of the learned advocate that credit cannot be denied on this ground.

9. In regard to mandatory penalty imposed under Rule 571 of the Central Excise Rules, the learned advocate argued that the irregularity of taking" credit on inputs used in the manufacture of thinners which are exempt from payment of duty, took place in 1992-93 whereas the mandatory penalty under Rule 571 was introduced in 1996. I agree with this contention. Penalty imposed under Rule 571 is set aside.

10. Having regard to what has been stated above that appeal is partly allowed. Penalty under Rule 571 of the Central Excise Rules is set aside. The demand for credit of Rs. 14,961/- is confirmed. The demand for rest of the amounts contained in the impugned order is set aside.

Interest payable in accordance with the law on this amount.

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