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

Decided On : Jun-11-2004

Reported in : (2004)(97)ECC362

Judge : S Peeran, R K Jeet

Appellant : El Forge Limited

Respondent : Cce

Judgement :

1. This appeal is directed against the Order-in-Appeal No. 137/98 (M-III) dated 27.3.1998 passed by the Commissioner of Central Excise (Appeals) Chennai by which the Commissioner has upheld the order passed by the original authority rejecting the prayer of the appellants for issue of Certificate of payment of duty in respect of the capital goods removed by them without payment of duty initially, but subsequently duty on the goods were paid by making necessary debit entries in the PLA.2. The brief facts of the case are that the appellants are engaged in the manufacture of Steel Forgings falling under Chapter 73.29. They avail Modvat facility for inputs as well as capital goods in terms of Rule 57A and Rule 57Q respectively. They have three units situated at Thoraipakkam and Kandanachavadi and Gummidipundi. Their units were previously known as Chendur Forge Exports Ltd. Pursuant to amalgamation of the above units with M/s. El Forge Ltd., the name of the units is changed as M/s. El Forge Ltd. They have obtained Dies and Trimming Tools and have availed capital goods credit on those goods declaring that the said goods are acquired for the purpose of

manufacture of forged steel articles. It was noticed by the Range Officer that during the period 1.4.94 to 31.5.95, Thoraipakkam Unit had removed certain quantity of Dies and Tools to various job workers and also to their other units without intimating the department and without payment of duty. Therefore, the Range Officer vide his OC No. 1549/95 dated 27.12.95 directed the appellants to discharge the duty liability in respect of Tools and Dies since the goods were removed in contravention of Rule 57S. Consequently, the appellants (Thoraipakkam unit) have debited the duty viz. Rs. 3,36,550 through PLA in respect of Dies and Tools removed outside the factory during the period from 1.4.94 to 31.10.95. Similarly, at the instance of the department, the Kandanchavedi Unit has paid a duty of Rs. 5,54,893 vide PLA No. 515 dated 29.2.96, and another sum of Rs. 1,32,066 vide RRG-23A Part I in respect of Tools and Dies removed to job workers. Thereafter, both the units viz. Thoraipakkam Unit and the Kandanchavedi Unit, of the appellants requested the Range Supdt. to issue necessary certificate regarding payment of duty made by them. The Range officer rejected their request vide his letter dated 29.3.96 on the ground that the question of issue of certificate under Rule 57E would only arise if the goods were initially assessed to duty and the buyer had availed the credit of duty. Thereafter the appellants vide their letter dated 17.6.96 sought for a speaking order to seek redressal of their grievance through the appellate forum. Thereafter, the Assistant Commissioner vide Order-in-Original No. 114/96 dated 22.7.96, after considering the case, has rejected the request of the appellants for issue of certificate of payment holding that the provisions of Rule 57R (4) does not apply to goods which escaped assessment. While holding so, he has noted that (i) capital goods were not cleared under invoice (ii) goods were not assessed to duty at the time of clearance (iii) buyer did not take credit of duty on receipt of capital goods. Aggrieved by the said order of the Original authority, the appellants filed appeal before the lower appellate authority who upheld the Order-in-original and rejected the appeal, hence this appeal by the assessee-appellants: 3. Shri R. Parthasarathy, learned Consultant for the appellants submitted that the appellants were under the bona fide belief that the dies and tools continued to be exempted in terms of Notification No.58/86-CE dated 10.2.86 and the appellants were not aware of the withdrawal of the exemption Notification because of the Budget

change in 1994-95. In any case on coming to know that the removals should have been effected on payment of duty, the appellants made the payment of duty by making necessary debit entries in the PLA. This factual position is not disputed by the department. He has further submitted that all that the appellants prayed for was to issue a certificate to the effect that the appellants have made necessary payment in respect of removal of the dies and tools made by them and when payment has been made though belatedly, the certificate should have been issued. He has further submitted that benefit of Modvat Credit is a substantive right and the benefit cannot be denied merely on the ground that the duty has been paid belatedly. He has also invited our attention to the decision of the Tribunal in the following cases:CCE v. SAIL, Rourkela Steel Plant, 1990 (30) ECC 114 (T) : 1990 (47) ELT 394.

(3) Larsen & Toubro Ltd. v. CCE, 1991 (31) ECC 34 (T): 19.90 (50) ELT 312,Durga Magnets Pvt. Ltd. v. CCE & C, 1992 (40) ECC 461 (T) : 1993 (64) ELT 342.PAM Instruments Pvt. Ltd., v. CCE, New Delhi-II, 3.1 He, therefore, prayed for setting aside the impugned order and allowing the appeal.

4. Shri A. Jayachandran, learned JDR appearing for the Revenue on the other hand submitted that, in this case, goods have been removed without permission of the proper officer and without payment of duty and it was only on being pointed out by the Department, that the appellants made necessary debit entries in their PLA. He has further submitted that the request for issue of certificate has been rightly denied by the authorities below, because in terms of Rule 57R(4), a certificate regarding payment of duty is issued if specified duty paid on any capital goods in respect of which credit has been allowed under Rule 57Q is varied subsequently due to any reason resulting in payment of refund to, or recovery of more duty from the manufacturer or importer as the case may be. He has therefore, submitted that the request of the appellants for issue of a certificate as prayed for does not come within the purview of Rule 57R(4). He, therefore, prayed for rejection of the appeal.

5. We have carefully considered the submissions made by both the sides, gone through the case records and perused the various case laws cited by the learned Consultant for the appellants, We note that in the instant case, the following facts

remain undisputed: (a) Capital goods viz. Dies & Tools were obtained by the appellants for the purpose of production of Forging articles. Modvat Credit on the said goods are availed by the appellants. The goods were earlier exempted from payment of duty in terms of Notification No. 58/86-CE dated 10.2.1986.

(b) Certain Dies & Tools were removed by the appellants to their sister units, without intimation to the department, without subjecting them to assessment and payment of duty.

(d) The buyer of the goods i.e. the other units of the appellants who are separately registered, have not taken credit of duty on receipt of the capital goods.

(e) Payment of duty was made subsequent to the clearance of the goods, when pointed out by the Department.

6. Now, the issue before us for determination is, in such a situation, whether the appellants' request for issue of certificate of payment of duty is in order and if so, under which provisions of law. Examining this question, we observe that Rule 57S prescribes the manner of utilization of capital goods and the credit allowed in respect of duty paid thereon. In terms of Sub-rule (ii) of Rule 57S(1), the goods should have been removed after intimating the Assistant Commissioner concerned and after payment of duty. As against that, the goods have been removed without intimation and without payment of duty, and duty was paid only subsequently, when pointed out by the Department. The goods were also not removed under any invoice either. Thus department was completely kept in dark about the removal of the goods. The only explanation given is that the appellants were under the impression that since the goods were earlier exempted, they continued to be exempted.

In the instant case, in respect of the removals made, the buyer of the goods, have also not taken credit of duty on receipt of the goods. The prayer of the appellants is that a certificate of payment of duty be issued to them, to enable the buyer of the goods, i.e. their other units, to take the benefit of credit. We note that in terms of Rule 57R(4), which has been extracted by the Original authority, Certificate is issued in a case, where there is variation of the quantum of payment of duty,

subsequent to the original payment of duty. In the present case, there was no payment of duty at all when the goods were removed.

Therefore, question of variation of quantum of duty does not arise.

Therefore, we are of the considered opinion that the prayer for issue of certificate of payment of duty has been rightly denied. The appellants have also relied upon various case laws as noted above in support of their plea for issue of certificate. In the case of CCE v.SAIL, 1991 (31) ECC 192 (T) : 1990 (47) ELT 389 (Tri), relied upon by them, there was payment of duty at the time of clearance of the goods and the dispute was about the eligibility of Modvat Credit in respect of payment of duty subsequent to the original payment of duty. Similar was the facts involved in the case of CCE & C, Bhubaneswar, 2001 (129) ELT 641 where there was payment of duty initially and payment of differential duty subsequently. In the case of CCE v. SAIL, Rourkela Steel Plant, 1990 (30) ECC 114 (T) : 1990 (47) ELT 394, there was a claim by the assessee for benefit of Modvat Credit on account of escalation of value of the inputs. Since the claim was not accompanied by any documents prescribed, the benefit of Modvat Credit for the escalated price was not allowed and it was in those circumstances, the Tribunal rejected the appeal filed by the Revenue. In the case of Larsen & Toubro Ltd. v. CCE, 1991 (31) ECC 34 (T) : 1990 (50) ELT 312, the assessee-appellants therein was asked by the Department to pay more duty than what was paid by the assessee at the first instance. In other words, there was variation in payment of duty. In the case of Durga Magnets Pvt. Ltd. v. CCE & C, 1992 (40) ECC 461 (T) : 1993 (64) ELT 342, the assessee therein had cleared one consignment by paying countervailing duty at 15% ad valorem and in respect of another consignment no countervailing duty was paid and after a period of one year there was a demand for payment of countervailing duty by the department and which demand was honoured by the assessee. In the case of PAM Instruments Pvt. Ltd. v. CCE, New Delhi-II, 2002 (148) ELT 944, appeal filed by the assessee therein was rejected since the assessee did not follow the procedure laid down under Chapter X. However, the assessee was given the liberty to obtain certificate in terms of Rule 57E because duty was paid on the input. It would, therefore, be seen that the facts in the present case are not similar to the facts in the cases cited by the appellants.

Therefore, the case laws cited do not come to the rescue of the appellants. In view of our above discussion, we do not find any reason to interfere with the order passed by the lower appellate authority. Accordingly, the impugned order is upheld and the appeal is rejected.

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