Commissioner of Central Excise Vs. Uttam Steel Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-13-2004

Reported in : (2004)(172)ELT175Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Uttam Steel Limited

Judgement :

1. Revenue is aggrieved by the order of Commissioner of Central Excise (Appeals), who, following the Board's order, dismissed the revenue's appeal filed against the order of Assistant Commissioner who had held that an endorsed Bill of Entry is a valid duty paying document for purpose of availing Modvat Credit. The Commissioner of Central Excise (Appeals) order is based on the following grounds: (i) No serious procedural lacunae to deny the credit and 1991(55) ELT 414 (SC) not applicable since no ground as alleged found.

(ii) No dispute regarding receipt and duty paid character of the inputs or the consumption, therefore the manufacture of final products relying upon the decision in Krishna Insulation of this Tribunal.

(iii) Board's order 96/7/95 Cx dated 13-2-95 has been correctly relied upon by the Assistant Commissioner and Board's Circular No. 33/33/94CX dated 04/05/94 does not (SIC) any bar to availment of credit on endorsed Bill of Entry.

(i) Assessee had ordered the imported goods and sold the same to M/s Lloyds Metal and M/s Raj Ratna Metal under High Seas Sales Basis, who/cleared the goods from the Customs by filling the Bill of Entries. Thereafter, as they were the importers declared in Bill of Entry, they should have issued the invoices for eligibility to credit. The non-observance of the procedure is not procedural lacunae and they rely upon 1991-55-ELT-454-SC. (ii) Boards order 33/33/94-CX dated 4/5/94 read with Rule 57G and notification 17/96 does not permit the credit.

(iii) Reference in case of M/s Plastic Weave Industries pending in High Court.

(a) Board's order 96/7/95/CX dated 13-2-95 permits such credit.

Board's Order No. 179/13/96-CX dated 29-2-1996, after considering the difficulties encountered in availing credit under Rule 57G/57 T in case of- "(ii) .....Imported goods lying in Custom dock area/bonded warehouse are diverted to manufacturing units in whose name Bill of Entry has not been filed".......

(b) "where the imported goods are still in customs dock area and the manufacturer/importer decides to divert/transfer the goods, a declaration by the manufacturer/importer can be made on the reverse of triplicate copy of Bill of Entry/duplicate copy of the Bill of Entry generated on EDI system by the manufacturer/ importer these consignments are being delivered to the unit (name of the unit) for availing credit and endorsed by the proper Officer of Customs for endorsing the manufacture unit to avail credit". " In this view of the eligibility to credit available, in this case and no allegation made that the procedure as prescribed has not been complied, no reason is found to deny the credit.

(c) No decision, contrary to the above instructions or the orders in Reference Application said to have been filed in the Hon'ble High Court shown 3. In view of the findings, no merits found in Revenue's Appeal. The same is dismissed.