

Ruby Impex Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-16-2004

Reported in : (2005)(99)ECC541

Judge : S Kang, a T V.K.

Appellant : Ruby Impex

Respondent : Commissioner of C. Ex.

Judgement :

1. These are four appeals, filed by M/s. Ruby Impex and Others against a common Order-in-Original No. 17/2002, dated 21-11-2002 passed by the Commissioner, Central Excise.

2.1 Shri K.K. Anand, learned Advocate, mentioned that M/s. Ruby Impex, Appellant No. 1 and M/s. Satish Metal Co., Appellant No. 2, are registered as dealers with the Central Excise Department and are engaged in the activity of trading; that M/s. Metal Transport Carriers, Appellant No, 3 and M/s. Deepak Roadways, Appellant No. 4, are carrying on the business of transport.

2.2 He submitted that the penalties have been imposed on all the Appellants on the ground that the importer of inputs, M/s. Shobit Impex, who had obtained registration for the purpose of dealing in inputs, had been issuing the invoices without physically bringing and storing the goods at their registered premises; that the allegation against Appellants Nos. 1 and 2 is that without receiving the goods,

they had passed on the Modvat credit by only issuing the invoices and Appellants Nos. 3 and 4 had handed over the blank G.R. Books to M/s.

Shobhit Impex, who had been using those G.Rs. for showing transportation of goods from Abhor to various destinations. The learned Advocate, further, mentioned that no duty has been demanded from Appellants Nos.

1 and 2 in the show cause notice as they have been asked to show cause only as to why penalty should not be imposed upon them under Rule 173Q of the Central Excise Rules for wrongly/fraudulently passing on the Modvat credit to the manufacturers, namely, M/s. Leader Engg. Works and M/s. V.K. Valves (P) Ltd. respectively; that no penalty is imposable on the Appellants Nos. 1 and 2 for wrongfully passing on the benefit of Modvat credit by issuing fake invoices in favour of the manufacturers who had taken the credit as per findings in the impugned Order; that there has been no provision for taking penal action for such alleged acts at the material time; that provisions of Sub-rule (1)(bbb) of Rule 173Q were not applicable to credits of Additional Customs duty imposed under Section 3 of the Customs Tariff Act before 14-7-99; that these provisions became applicable to the credit of Customs duty only after amendment in Rule 173Q by Notification No. 50/99-C.E. (NT.) dated 14-7-99; that this position has been clarified by the Board vide Circular No. 472/38/99-CX, dated 21-7-99; that this aspect has also been dealt with in the case of Shobhit Impex v. C.C.E., Chandigarh, 2001 (127) E.L.T. 435 (T); that the Tribunal has held that Rule 173Q(1)(bbb) "as it stood during the period in dispute, did not cover a situation where the buyers' availment of credit of additional duty was facilitated, and covered only a situation where the buyers' availment of credit of excise duty was facilitated." The learned Advocate contended that as the Central Excise Rules did not provide for any penal action for wrongly passing on the credit of Additional Duty of Customs prior to 14-7-99, no penalty could be imposed.

3. He, further, submitted that the penalty has been imposed on Appellants Nos. 3 and 4 under Rule 209A of the Central Excise Rules, 1944, which are not attracted as the goods involved here are imported one and not excisable goods; that penalty under Rule 209A may be imposed where any person commits any of the acts or

deals in excisable goods which he knows or believes are liable for confiscation under the Central Excise Act or Rules; that as the Appellants Nos. 3 and 4 had simply handed over blank G.R. Book to M/s. Shobit Impex, they had not transported or dealt with excisable goods in any manner which they know or had reasons to believe were liable for confiscation; that Rule 209A does not cover any act of abatement. He also mentioned that when no action has been sustained against M/s. Shobit Impex whom blank G.R. Books are alleged to have been given for use, without any guilty knowledge, no action against the transporters could be taken. Finally, the learned Advocate submitted that appeals filed by both M/s. Leader Engg. Works and M/s. V.K. Valves (P) Ltd., whom allegedly benefit of Modvat credit has been allowed by the Appellants, have been allowed by the Tribunal vide Final Order Nos. A/622/2003-NB, dated 24-6-2003 and 795/2003-B, dated 7-10-2003 respectively; that thus no penalty need be imposed on any of the Appellants.

4. Countering the arguments, Shri Vikas Kumar, learned S.D.R., submitted that duty involved had been reversed voluntarily in the present matters which goes to show that the charge of making the Modvat credit available to the manufacturers wrongfully and fraudulently is correct; that penalty is imposable on the Appellants as on account of the actions of the Appellants Nos. 1 and 2, Modvat credit was availed of by the manufacturers which was not admissible; that the provisions of Rules 173Q and 209A of the Central Excise Rules are attracted as the goods were arranged from the local market.

5.1 We have considered the submissions of both the sides. The charge against M/s. Ruby Impex and Satish Metal Co. is that they have wrongly passed on Modvat Credit by issuing fake modvatable invoices in 1997 and 1998. The question involved in these appeals is whether penalty is imposable on these two Appellants under Rule 173Q(1)(bbb) of the Central Excise Rules. This Clause (bbb) of Sub-rule (1) of Rule 173Q, prior to its amendment by Notification No. 50/99-CE. (N.T.) provided imposition of penalty on a registered dealer if he "enters wilfully any wrong or incorrect particulars in the invoice issued for the excisable goods dealt with by him with intent to facilitate the buyer to avail of credit of the duty of excise in respect of such goods which is not permissible under these

Rules." 5.2 The learned Advocate has thus rightly contended that during the relevant period, the penalty under Clause (bbb) could be imposed only for making entry falsely in the invoice for the goods with intent to facilitate the buyer to avail credit of excise duty only and no other duty. It is only after the amendment of this Clause by Notification No.50/99-C.E. (N.T.) dated 14-7-99; that words "additional duty under Section 3 of Customs Tariff Act" were inserted and penalty can now be imposed only on or after 14-7-99 for falsely making available the Modvat credit of Additional Customs Duty. The period involved in these matters is all prior to 14-7-99 and accordingly penalty is not imposable under this Clause on the Appellant Nos. 1 and 2. This was also explained by the Board vide Circular No. 472/38/99-CX, dated 21-7-99 as under : "..... the penal provisions for wrongfully passing on credit of the additional duty under the Customs Tariff Act did not exist. In order to cover the aforesaid types of cases, Rule 173Q has been amended by Notification No. 50/99-C.E. (N.T.), whereby the Sub-rule (1) in Clause (bbb) for the words "credit of the duty of excise", the words, figures and brackets "credit of the duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975)" has been substituted." 5.3 The Tribunal also has held in Shobhit Impex case, supra, that "this Sub-rule as it stood during the period in dispute, did not cover a situation where the buyers' availment of credit of additional duty was facilitated and covered only a situation where the buyers' availment of credit of excise duty was facilitated. In view of this, the penalty imposed on both, Ruby Impex and Satish Metal Co. is set aside.

6. We also agree with the submissions of the learned Advocate that penalty cannot be imposed on Milap Transport Carriers and Deepak Roadways under Rule 209A of the Central Excise Rules, 1944 as none of the ingredients mentioned in the said Rule 209A is applicable. A penalty is imposable on any person, who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Central Excise Act or Rules. They were asked to show cause as to why penal action under Rule 209A should not be taken against them for giving blank book of GRs to Shobhit Impex thereby facilitating them in issuance of fake and bogus modvatable invoices in contravention of Rules 57G

and 57GG and in abetting in wrongly passing of Modvat credit. The Commissioner has imposed the penalties on them in the impugned Order as they had facilitated Shobit Impex "for issuance of fake & invalid bogus modvatable invoices". Thus they had neither acquired possession of excisable goods nor dealt with excisable goods in any manner with the knowledge that the goods are liable for confiscation under the Central Excise Act. Moreover, no excisable goods are involved as the charge and finding against them is that they facilitated the issue of fake and bogus invoices against which no goods - whether excisable or imported - were transported to manufacturers.

Accordingly, we set aside the penalty imposed on Appellants Nos. 3 and

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