

Press Comp International Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-20-2004

Reported in : (2004)(98)ECC435

Judge : S Peeran, N T C.N.B., M T K.C.

Appellant : Press Comp International

Respondent : Cce

Judgement :

1. This Larger Bench has been constituted pursuant to the order passed by the Hon'ble High Court of Karnataka in Writ Petition. 8987/2000. The direction of the High Court is as follows: "The President of the tribunal is directed to constitute a Larger Bench of the tribunal to resolve the disputed question dealt with and hold that the dictum in S.B.S. Organics, is correctly decided and answer whether an Invoice/Gate pass endorsed more than once is valid document within Rule 57-G of the Central Excise and Customs Rules. The Appellate Order passed by the second respondent is set aside. The appeal filed by the petitioner is ordered to be restored to the file of the second respondent. It is to be heard and disposed of in accordance with law after disposal of the matter by the Larger Bench." 2. The disputed question is whether Modvat Credit could be taken on "the invoice-cum-challan of M/s. Steel Authority of India Ltd. which have been endorsed twice".

3. We have perused the records and have heard the learned Counsel representing the assessee and learned SDR.4. The contention on behalf of the assessee is that

this issue remains correctly decided in favour of assesseees by the order of this Tribunal in case of S.B.S. Organics Pvt. Ltd. v. Collector of Central Excise, 1990 (45) ELT 701 (Tri). The learned Counsel has drawn our attention specifically to the observations of the Tribunal in Para 4 of the Order. The learned Counsel has also submitted that Rule 57G contains no bar against taking of Modvat Credit against endorsed Gate Passes or the number of endorsements that may be made. Instead, the substance of the Rule is that an assessee " should take credit of the duty paid on the inputs received by him" Proviso to Sub-rule (2) also states that credit may be taken against any of the prescribed documents covering the receipt of the goods. The learned Counsel also pointed out that even though the Board's Circular No. 1/89 dated 23.1.89 had stated that "the subsidiary gate passes/certificates issued by the aforesaid agencies may be permitted to be endorsed only once for purposes of availing Modvat credit and that too only if the entire material covered by such documents is sent to another person," subsequent Circular No. 14/89 dated 17.4.89 clarified that "the original gate pass which has been endorsed once can be further endorsed once more provided the entire goods covered by GP1 are transferred to third party in original packing". The learned Counsel has submitted that it is clear from the second Circular that the substance of the instruction is not the number of endorsement before a manufacturer assessee receives the duty paid inputs, but identifying the duty paid nature of the goods from "original packing" "entire goods covered by GP1" and such identification marks. The learned Counsel further stated that the requirement has been further liberalized under Notification No. 16/94 dated 30th March, 1994 by prescribing under Sl. No. 10 of that Notification "endorsed gate passes/subsidiary gate passes/certificate" as specified documents for the purpose of taking Modvat Credit. The learned Counsel emphasizes that this entry does not put any limit on number of endorsements. The learned Counsel has further pointed out that, taking into account the large number of disputes which had arisen during the implementation of Modvat Credit Provisions, the Central Board of Excise and Customs and clarified in Circular No. 441/7/99-CX.dated 23.2.99 [reported in 1999 (31) RLT M61] as follows: "I am directed to refer to Notification No. 7/99-CE (NT), dated 9.2.1999 issued to amend Modvat Rules. The aforesaid notification has been issued to insert Sub-rule (11) in Rule 57G and Sub-rule (13) in Rule 57T of

the Central Excise Rules, 1944 so as to empower the Assistant Commissioner of Central Excise having jurisdiction over the factory of the manufacturer to allow credit of duty paid on inputs/capital goods ignoring minor procedural lapses in falling the declaration or in the invoice/document based on which credit is to be taken. However, the Assistant Commissioners should ensure that inputs/capital goods have suffered duty and are being used/are to be used in the process of manufacture. The Assistant Commissioner is also required to record the reasons in file for allowing Modvat credit in each case.

2. The Assistant Commissioner, before issuing Show Cause Notice for wrong availment of Modvat credit by the assessee on any procedural grounds, shall conduct enquiries with regard to duty paid nature of the goods at the suppliers end ensure that necessary information as mentioned in the Notification are available on the invoice and satisfies himself whether the goods have been used or are intended to be used as contemplated in the Modvat Rules. In case the assessee's invoice contains the details viz. description of the goods, assessable value, name and address of the factory or warehouse where the goods are to be received, and if the assessee has filed a declaration as contemplated in the Modvat rules, the Assistant Commissioner having jurisdiction over the factory would allow the credit of duty so paid after making enquiries as above.

3. It should thereafter be ensured that Show Cause Notices are not issued for procedural lapses as mentioned in the Notification without making proper enquiries. Whether the Assistant Commissioner, after making due enquiry, is satisfied that the Modvat credit taken by the assessee is incorrect, adjudication proceedings in the normal course should be initiated. Efforts, however, should be directed toward reduction of litigation.

According to the learned Counsel, this final clarification of the Board settles the issue beyond any doubt, that credit should not be denied on procedural grounds and cases should be determined after causing verification as to whether credit taken correlates with the duty paid.

The Circular has also directed that "all pending cases may be disposed of accordingly". According to the learned Counsel, the present case also is a pending

case, and is required to be disposed of based on merits of the claim and not on procedural grounds. The Counsel pointed out that in the instant case, the entire consignment had been transferred during the endorsements of gate passes and no doubt whatsoever has been raised on the duty paid nature of the inputs received. He therefore, submitted that on merits the appellant's case is required to be allowed.

5. As against the above contentions and submissions on behalf of the assessee, the learned SDR has contended that the reliance placed by the assessee on Notification No. 16/94 is not correct inasmuch as Sl. No.10 related only to "endorsed gate passes/subsidiarily gate passes/certificates" and not "delivery-cum-invoice" of Steel Authority of India under which the goods in the instant case had been received.

The learned Counsel for the assessee has refuted this by pointing out that this objection cannot find place in view of the fact that Rule 57G states "a Gate Pass, an AR-1, a Bill of Entry or any other document as may be prescribed by the Central Board of Excise & Customs". According to the learned Counsel, all duty paying documents, by whatever name called, should be treated as covered by Notification No. 16/94. The learned SDR has also brought to our notice the decision of this Tribunal in the case of Premier Induction (P) Ltd. v. Collector of Central Excise, Chandigarh, 1996 (12) RLT 22 (CEGAT) wherein the Tribunal appears to have rejected the claim for Modvat in respect of Gate Passes which had been endorsed more than once.

6. It is clear from the various Rules, Notifications and Instructions relied on by the assessee that all duty paying documents, irrespective of their name, are to find equal acceptance for the purpose of Modvat claims. The limitation about endorsement had also been revised from one endorsement to two in Board's Circular. Further, the later clarification in particular Circular dated 441/7/99-CX, dated 23.2.99 [reported in 1999 (31) RLT M61] emphasizes that claims are not to be rejected merely on procedural grounds, but only after proper enquiry into the duty paying aspect and that all pending cases are covered this instruction. The appellant's is a pending case and there is no allegation that the inputs

consignment in question was not duty paid.

The objection raised is purely a procedural one, that the consignment was purchased under 2nd endorsement of sale document namely, challan-cum-invoice. It is also disputed that the endorsement was in respect of full consignment covered by the document and not part consignment. In these facts and circumstances, in terms of the instructions of the Board themselves, the appellant's claim is required to be allowed.

7. Coming to the decisions of this Tribunal on the issue of endorsed Gate Passes, the Tribunal expressed the following view in S.B.S.Organics Pvt. Ltd. (supra).

"4. We have carefully considered the arguments from both sides. The main issue to be decided in this appeal is whether the denial of Modvat credit in respect of inputs received under gate passes endorsed in favour of the appellants after passing through more than two hands, is sustainable. Rule 57G of the Central Excise Rules stipulates that inputs are to be received under the cover of a gate pass, an AR-I, a Bill of Entry or any other document as may be prescribed by the Board. Gate pass is a document prescribed for removal of the goods from the factory of manufacturer to the first destination. This is evident from the provisions of Rule 52A and Rule 173G of the Central Excise Rules. Hence, when there is a stipulation in Rule 57G that the inputs are to be received under gate pass by the claimant of Modvat credit, it should be normally taken to mean that the said Rule contemplates receipt of inputs straight from the factory of manufacturer under gate pass. In that case, the consignee is necessarily to be the Modvat claimant and consignor being the manufacturer of inputs. However, when this requirement created some difficulties in the case of Small Sale units to obtain the inputs through intermediaries the Boards appears to have made relaxation to this requirement, by permitting one endorsement in the gate passes initially and subsequently based on the representations permitting upto two endorsements in the gate passes. This relaxation made by the Board appears to be purely of administrative nature based on consideration of implementing the Modvat scheme, so long as the duty paid nature of the goods and duty paid thereon could be established. As seen from the Trade Notice cited by the learned Advocate, it is

evident that the Government is keen to extend the Modvat credit so long as the goods in factory packed condition as are covered by the gate passes are received by the parties intending to avail Modvat credit. Going by this spirit of the relaxation, we are unable to appreciate the routine and mechanical approach of the authorities below in rejecting the claim of the Modvat credit only on the ground that more than one endorsement have been made. When the Board themselves have taken a decision to relax the procedural requirement by way of administrative instruction to should be the endeavour of the authorities to extend Modvat credit wherever, the duty paid nature of the goods is evident from the gate passes produced and quantum of duty paid on the inputs could be ascertained from them. A positive approach is called for in this regard. We also take note of the argument of Shri Arya that permitting a number of endorsements would involve in considerable administrative burden and the gate passes are likely to be abused. In this case, it is contended by the other side that the previous endorsements have been made not by any other manufacturer who could utilize this inputs but only by intermediaries in the trade channel. In any case, the department is entitled to make verification or investigation with regard to the genuineness of the gate pass and also on the question whether gate pass has been utilized for availment of Modvat credit at the earliest stages. In this case, no such enquiry appears to have been conducted and the Modvat credit has been denied only on the ground that more than that of permitted endorsements have been made in the gate passes. Such an order cannot be sustainable in the context of the scheme of Modvat credit read alongwith the relaxation made by the Board. We, therefore, set aside the order passed by the authorities and permit availment of credit, While doing so, we allow the liberty to the Assistant Collector to cause any inquiry or investigation to satisfy himself about the genuine nature of the gate passes and also about non-utilization of the gate passes at the earlier stages of endorsements for availment of Modvat credit. The appeal is disposed of in the above terms." The dictum in the above order is that denial of credit, merely for the reason of the duty paying document being endorsed, would create administrative difficulties and would create problems in extending the intended Modvat Credit relief, and, therefore, denial of credit should not be on that ground alone, but only on a finding, upon verification, that the consignment in question had not discharged the duty claimed

as Modvat Credit. A perusal of the instructions issued by the Board from time to time shows that procedural difficulties were standing in the way of implementing the scheme. In order to obviate these, the Board itself finally issued Circular dated 23.2.99 that on procedural grounds credit should not be denied. In these facts and circumstances, we are in full agreement with the view taken by this Tribunal in S.B.S.Organic case. As regards Tribunal's decision in the case of Premier Induction (P) Ltd., it is to be noted that this decision being subsequent to the decision in the S.B.S. Organic case, the Co-ordinate Bench could not have overruled the earlier decision. Nor has the Bench done the same. The decision was rendered in the facts of the case before the Bench. This is clear from the following observations in the order in M/s. Premier Induction (P) Ltd. case: S.B.S. Organics Pvt. Ltd. v. Collector of Central Excise, (supra) the goods were in factory packed condition, in original packing. In the case before us, the goods were loose." Thus, there is no conflict between the decision in S.B.S. Organics Pvt.

Ltd. and Premier Induction (P) Ltd. 8. In the light of what has been stated above, we affirm the dictum in the S.B.S. Organic's Order and answer the reference in favour of the assessee. Further, since no other issue is involved in the present case, the appeal itself is allowed with consequential relief to the appellant after setting aside the impugned order.

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