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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-20-2004

Reported in : (2005)(191)ELT239Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Birla Copper

Respondent : Commissioner of Customs and

Judgement :
1. Appellants are manufacturers of copper electrodes, continuous cast copper rods etc. and avail credit of duty paid on inputs. During the course of manufacture, fully duty exempted gold bars and silver bars also emerge. They reverse 8% amount equivalent to the sale value of such exempted goods as required by Rule 57AD of the Central Excise Rules, 1944 and Rule 6 of the Cenvat Credit Rules, 2002.

2. Such reversals are effected by. debit entry in the PLA. A consolidated debit entry of such 8% amount was made on 20.2.2001 for an amount of Rs. 16,43,97,493/- for the period July 2000 to January 2001.

However, the assesses found that for the month of January 2001 on five invoices, an amount of value taken was Rs. 21,99,60/155/- while the actual value to be taken was only amounting to Rs. 2,19,60,155/-; the calculation and reversal of 8% on the 3 incorrect value of Rs. 21,99,60,155/- resulted in a clerical error excess debit of Rs. 1.584 crores, vide entry 22 dated 22.2.2001 in the PLA. They corrected the clerical errors and suo moto took an entry of credit of Rs. 1.584 crores in the PLA on 24.3.2002 and intimated the department of these clerical corrections in the PLA maintained, vide letter dated 24.3.2002. This credit of Rs. 1.584 crores was not utilised, as per the direction of the Superintendent dated 23.7.2002 and correspondence was exchanged with the department and finally they represented to the Commissioner the intent to utilise the credit of Rs. 1.504 crores. They were served a notice dated 12.3.2003 proposing to recover this credit on the grounds - i) Credit can be availed in PLA only of amounts paid by TR-6 challan; ii) Section 11B would be applicable, since no refund claim was filed and the credit taken on 24.3.2002 is barred by limitation.

The Commissioner, vide order dated 18.12.2003, held that by virtue of another order dated 2.6.2003, gold bar was held to be liable to duty and the 8% amount debited and Rs. 1.584 crores credit taken was nothing but duly and the refund claim is barred by limitation by Section 11B.Hence this appeal.

3. Heard both sides and considered the material on record. It is found - (a) The findings of the Commissioner have travelled beyond the show cause notice. The issue of gold bars being dutiable was not an issue raised for the assessee to meet in the show cause notice issued in this case. The issue was of the 8% amount incorrectly worked and debit made on 20.2.2001 and corrections effected thereafter. Such order travelling beyond the notice is to be held bad in law, following the judgments of the Supreme Court in Reckit & Colman of India Ltd. v. CCE(1996 [88] ELT 641 [SC]) and Prince Khadi Woollen Handloom v. CCE (1996 [88] ELT 637 [SC]), end order Is required to be set aside only on this ground.

(b) It is well settled that amounts of credit under the MODVAT/CENVAT schemes are not duties. The a mount of 8% required lo be reversed is not even credit of specified duties but is a percentage of the value of the fully exempted goods. Equating the same with duty, and applying Section 11B, is net, therefore, called.

Reliance by the appellants on the case of Priya Blue Industries Lid.

v. CCE (c) There is no provision in CENVAT Rules, requiring an assessee to obtain prior specific permission from the department to correct clerical errors in the maintenance of their ledgers/registers. There is only an obligation to maintain true and correct accounts under erstwhile MODVAT/Central Excise Rules, 1944. Non-compliance would attract penal consequences under Rule 226 of the Central Excise Rules, 1944. Correcting an error detected, suo moto or otherwise in the PLA, is an exercise in Account Maintenance in true and correct form. Under Rule 226(ii), the assessee was required to intimate the department about the clerical corrections before 24.3.2002; they have done so only on 24.3.2002. That there was no clerical incorrect calculation and error in the debits made on 22.2.2002 is nobody's case herein. The clerical error has to be corrected. E. & O.E. is an accepted practice in accounts and commerce. The assessee's act has to be viewed in that context. The plea of the DR that corrections were made subsequent to certain enquiries launched by the officers on the durability of gold bars and silver bars, would be a reason to suspect an entry but not deny the cross entry, if otherwise it is found to be clerical and required to keep the Book balanced and corrections can also be not denied. We find no reasons to deny the credit-entry as made in the PLA and its utilisation by the assesses.

(d) Cross entry of credit taken to offset an incorrect debit entry by keeping cross references is the only prescribed method of Accountants in Book Keeping. Such entry cannot be denied on the grounds that only TR-6 challan amounts could be credit entries which could be made in the PLA, as made out in the notice. The notice appears to be issued in ignorance of the instructions on maintenance of PLAs and Book Keeping Practices accepted all over the world. (e) No reasons are found to uphold the penalty of Rs. 5,000/- as arrived by the adjudicator.

4. In view of the findings arrived, the order is to be set aside as regards the demand made and penalty imposed.