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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-20-2004

Reported in : (2004)(97)ECC756

Judge : A T V.K., P Bajaj

Appellant : Bhaskar Industries Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this appeal filed by M/s. Bhaskar Industries Ltd. is whether the Cenvat Credit can be availed of on the basis of attested copies of Bill of Entry.

2. Shri B.L. Narasimhan, learned Advocate, submitted that the Appellants imported capital goods in 1998; that the original triplicate copies of Bills of Entry received by them at their registered office were sent to their factory premises by courier; that unfortunately, the consignment containing these bills of entry never reached their factory in respect of which they had lodged an FIR also with the police; that in order to avail Cenvat Credit, they requested the Customs authorities to issue attested copies of Bills of Entry; that Cenvat Credit has been disallowed to them on the ground that there was no provision under the Central Excise Rules during the relevant period to allow Cenvat Credit on the basis of attested copies of Bills of Entry. The learned Advocate, further, submitted that there is no dispute to the factual position that the capital goods imported under the impugned Bills of Entry were received by them in their factory and were used in the manufacture of

excisable goods which is evident from the certificate issued by the jurisdictional Excise authorities; that there is also no dispute that the Additional Customs duty was actually deposited by them which is evident from TR-6 challan and certificate issued by the Asst.

Commissioner of Customs; that thus substantive condition governing availability of Cenvat Credit in capital goods have been satisfied and accordingly they are entitled to take Cenvat Credit; that further Rule 57AE of the Central Excise Rules at the relevant time specifies the documents on the basis of which Cenvat Credit can be taken; that one of such document is "Bill of Entry"; that there is no condition or stipulation in Rule 57AE as to the copy (original/duplicate/triplicate) on the basis of which Credit can be taken; that in view of this, the attested Bills of Entry satisfy the condition stipulated in Rule 57AE.Learned Advocate also referred to the Board's Circular No.B-4/7/2000-TRU dated 3.4.2000 wherein it has been clarified that "In the Cenvat Scheme, the documents on which Cenvat Credit can be taken have been prescribed to enable verification, where needed, by the Department. The admissibility of the amount of Cenvat Credit should be discernible from the records of the manufacturer, including the payment made to the sellers of inputs and capital goods. The basis responsibility is upon manufacturer to prove that inputs or capital goods were purchased and were used by him for the intended purpose." He contended that the payment of duty as well as the use of the capital goods both have been established by the Appellants and accordingly Cenvat Credit cannot be denied to them.

3. Countering the arguments Shri S.M. Tata, learned SDR, reiterated the findings as contained in the Order-in-Original and Order-in-Appeal. He emphasized that there was no proviso in the Central Excise Rules to avail of the Cenvat Credit on the basis attested copies of Bill of Entry.

4. We have considered the submissions of both the sides. The appellants have taken Cenvat Credit in the present matter on the basis of duplicate copies of Bills of Entry duly certified by the Customs officers. Rule 57AE specifies the documents on the basis of which Cenvat Credit can be taken by the manufacturer. One of such documents specified in Rule 57AE of the Central Excise Rules, 1944 is 'Bill

of Entry'. We agree with the learned Advocate that the documents namely Bill of Entry has not been qualified with any other word such as triplicate Bill of Entry, or duplicate copy of Bill of Entry. The Department, therefore, cannot claim that the duplicate Bill of Entry duly certified by the Customs officers is not a Bill of Entry as specified in Rule 57AE of the Central Excise Rules, 1944. In addition the Appellants have produced a certificate from the Asst. Commissioner of Central Excise that the capital goods imported under the impugned Bill of Entry have been installed in the Appellants' factory and have been used for the production of final product. The Board's Circular dated 3.4.2000, relied upon by the learned Advocate, explains the purpose of document on the basis of which Cenvat Credit can be taken.

According to the Circular the documents have been prescribed to enable the verification by the Department. The certified copies of Bill of Entry alongwith certificate produced by the Appellants are sufficient for the purpose of verification, if needed by the Department.

Accordingly we hold that the Appellants are eligible to take the Cenvat Credit of the duty on the basis of attested copies of Bills of Entry.

The appeal is thus allowed.