

Bharat Forge Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-19-2004

Reported in : (2005)(179)ELT154Tri(Mum.)bai

Judge : A Wadhwa, S T S.S.

Appellant : Bharat Forge Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The dispute in the present appeal revolves around the issue as to whether the appellant were required to debit back the same amount of modvat credit originally taken by them on the inputs when the inputs were subsequently cleared by them as such. The duty of Rs. 23,76,352/- has been confirmed against the appellant on the ground that they have cleared the inputs subsequently, at a lower value and thus debiting lower duty, as they had become obsolete due to cancellation of order by the customer, change in specification, change in design etc. Equal amount of personal penalty has also been imposed by the commissioner.

2. Shri. A.G. Kulkarni (Consultant) appealing for the appellant, does not dispute that the appellant are required to pay back the same amount of modvat credit originally availed by them but submits that the demand in question is barred by limitation. Show cause notice dated 17/1/2002 was issued for the period 1998 - 2001. The inputs in question were cleared by the appellant on invoices which were being regularly submitted to the Central Excise Authorities and the transactions

were also being reflected in RT-12 returns, RG 23A (Part - I & II). Copies of all these documents were been submitted to the department and there was no suppression, fraud or wilful misstatement on the part of the appellant, so as to justify the revenue's action of invoking the longer period of limitations. In support of the above submissions, he referred to the various decision of the Hon. Supreme Court as also of CEGAT.² Countering the arguments, Shri. S. Singhal (JDR) submits that the law on this point was settled as far back in the year 1996 by the Larger bench decision of the Tribunal in the case of American Auto Services 1996 (81) E.L.T. 71 (Tribunal), also in the case of Commissioner of Central Excise, Vadodara v. Asia Brown Boveri Ltd, 2000 (120) E.L.T. 228 (Tribunal- LB) laying down that the manufacturer has to reverse the credit by debiting the same quantity of credit which he has originally availed. He submits that the appellant is a leading manufacturer and should have known the legal proceedings. He justifies the impugned order confirming the demand of duty by invoking longer period of limitation.

3. We have considered the submissions made by both sides. The case on merits has not been argued by the appellant. The submission have been made only on the point of limitation. We note that the plea of demand being barred by limitation was also raised before the Commissioner, who has not accepted the same by observing that in the scheme of self assessment, it is the responsibility of the assessee to determine the correct amount of duty and to pay the same before the goods are cleared. It is difficult to believe that a well-established company is not aware of the Rule 57 F (3) (a). We do not find much force in the reasoning of the commissioner. What has been observed for the appellant, also clearly applies for the revenue. If the law was settled in the year 1996 by the Larger Bench decision of the Tribunal in the case of American Auto Services, revenue should have been aware of the same. The adjudicating authority has no where disputed that the invoices under the cover of which, inputs were being cleared at a lower rate of duty and other related documents were not filed by the appellant with the Central Excise Authorities. When all the facts were being placed before the revenue, they should have taken objection to the facts of reversing less credit within the normal period of limitations instead of waiting for five years and raising demand by invoking longer period. As such, we are of the view that the demand in question is

badly hit by the bar of limitation having being raised after normal period of six months. We accordingly, set aside the same alongwith setting aside of penalty. In a nutshell the appeal is allowed with consequential relief to the appellant.

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