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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-02-2004

Judge : A Wadhwa, S T S.S.

Appellant : imp Power Ltd.

Respondent : Commissioner of Customs

Judgement :

1.1 Appellant are engaged in the manufacture and export of inter-alia, Electrical Transformers. During the year 1994-95 pursuant to export orders received they obtained various Value Bond Import Licences, imported the goods and effected Exports.

1.2 For the manufacture of the goods exported the main puts were of Copper Wires Bars, & Transformer Oil were imported the other inputs were procured locally. On local procured goods, Modvat Credit was not availed while on duty free imported material it could not be availed, since no Credit duty was paid. On certain minor inputs no mentioned in the list of goods permitted to the imported on the licences, which they procured locally, they availed Modvat Credit amounting to Rs. 6,21,036.00.

1.3 On learning that this credit of Rs. 6,21,036.00 availed was not permissible, they voluntarily Reversed the credit much before the circular permitting such reversal vide No. 285/1/97 dt. 10.1.97. The reversal was effected on 17.1.95 & 30.1.95. Interest @ 20% till the date of reversal was also paid by debit entry

28.1.95.

1.4. Commissioner New Customs Mumbai, issued noticed, during the month of March & September 1998 for recovery duty of Rs. 1,11,39,655.00 on duty free imports made on Advance Licenses on the grounds that the appellants had availed Modvat Credit on inputs which was used in the Exported Goods and that was a violation of condition of Notification 203/9 dt. 19.5.92.

1.5 Commissioner vide the order impugned in this appeal, confirmed demand of Rs 6,73,949.13, in the ratio of credit reversed prior to 31.1.1997 and the additional credit reversed after 31.1.97, in view of the Cost Audit Report holding that the appellant had violated the provisions of notification 203/92-Cus.

2.1 After hearing both sides and considering the materials it is found : (a) Issue is determination of violation of condition no (vi) of notification 209/92 i.e. Modvat Credit notification availed during the period August 94 to Dec. 95.

(b) The benefit of Amnesty Scheme has not been granted by the adjudicator as - i) Cost Auditors Report determined an amount of credit Reversal of Rs. 6,59,937/- while the appellant had only reversed an amount of Rs. 6,21,036/- upto Jan 95 along with interest as worked out by the assessee.

ii) event though the Cost Auditor had not worked out net decrease, yet the Assistant Collector in his certificate dt. 22.2.98 indicated the total amount to be recovered before 31.1.97 the Amnesty dead line date. This variance was not possible.

iii) Thereafter the adjudicator had worked out the decrease in percentage of compliance & non compliance & arrived at a figure of 9..95% of compliance and accordingly held the violation of clause of notification only to the extent if fell short of 100% & determined the duty payable.

c) This elaborate calculation, by the Adjudicator Based on the Cost auditors Report, which he terms to be "but such amount has neither been indicated by the cost Auditor in his report nor in the certificate dt. 22.3.98 issued by the jurisdiction Assistant Commissioner", however, he holds these complicated questions of credit

required to be determine the question of amounts required to be reversed, to be a wilful misstatement of not having availed Modvat Credit & a requisite therefore to permit invocation of longer period under section 28 of the Central Act 1962.

d) The difference in the amounts of Credit required to be reversed in only Rs. 39.901 & interest therein is Rs. 29,000/- which was discharged by the appellant on 24.8.98. The Adjudicator has been granted the refund of this balance payment and the duty demand of Rs. 6,73,949.13/- upheld under the provisions of Central Act, 1962 by the impugned order.

e) That there was an effort and desire on the part of the assessee to Reverse the total amounts of ineligible credit cannot be doubted.

Infact the same was reversed voluntarily in Jan 1995 i.e. tow years before the Amenity Scheme was brought in of Jan 97, that should indicate the bonafides of the assessee. The demands of duty made by denying the Amenity Scheme benefits by an elaborate calculation as adopted, based on admitted deficiency in the Credit Reversal Certificates issued by he jurisdiction Assistant Commissioner and the Cost accountant, lead only to a conclusion that some how the benefit of notification is to be denied even by ascribing motive on part of the appellants of wilful desire which cannot be in fact herein established.

f) Perusal of the AR4 forms, do not show a declaration about Modvat credit availed Nor do the Shipping Bills reveal any such deliberate design to wilful misdeclare. There is no ground to uphold the demand of duty on time bar.

g) The bonafides of the appellant is further strengthened from the conduct of depositing the credit amount reversals short fall, along with interest. The refund of the same therefore as ordered by the lower authority was not called for. In any case a Collector of Customs cannot order a refund of the debits made in the RG23A register. That part of the order cannot be upheld.3. In view of the findings herein, the appeal is allowed in above terms.

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