**Panjon Limited Vs. Cce**

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**SooperKanoon Citation** : sooperkanoon.com/37400

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-16-2004

**Reported in** : (2005)(99)ECC753

**Judge** : M T K.C.

**Appellant** : Panjon Limited

**Respondent** : Cce

**Judgement** :

1. The appellants are manufacturer of Purti Tazgi Masala falling under sub-heading No. 2180.90 of the Schedule to the Central Excise Tariff Act, 1985 and are availing Modvat credit on the inputs used in the manufacture of their final products. They had taken Modvat credit of Rs. 1,67,530 on the strength of the Invoices No. 3971 dated 21.2.95 and 3972 dated 21.2.95 issued by M/s. Paper Products Ltd. It was found that the date of issue of these invoices was much before the period of six months from the date of the availment of the credit by the appellants.

Therefore, show cause notice was issued to them for disallowing the Modvat credit of Rs. 1,67,530 and after adjudication, the adjudicating authority disallowed this credit and imposed a penalty of Rs. 20,000 on them. On appeal, the Commissioner (Appeals) upheld the order of the adjudicating authority disallowing the credit. However, he set aside the penalty imposed on the appellants.

2. Shri A. Uppadhyay, Ld. Advocate appearing for the appellants pleaded that the invoices on the strength of which the appellants took the Modvat credit pertains to Feb., 1995 and at that time, there was no restriction under Rule 57G of six months to take the credit from the date of invoice. The appellants have cleared the goods under Rule 57F (ii) to its supplier through invoices and debited the amount of Rs. 1,67,530 in the invoice. Since the appellants have already debited the amount of credit taken, there is no question of debiting the same again and if the appellants could not have debited the amount, then there can be question of recovering the same. But since the appellants have already debited the credit, the same should be adjusted against the denial of credit. He relied on the Supreme Court's decisions as under:Chandrapur Magnet Wires (P) Ltd. v. CCE, 1996 (53) ECC 139 (SC): 1996 (81) ELT 3 (SC)Bellry Steels & Alloys Ltd. v. CCE, Belgaum, Wherein it was held that the credit availed in RG-23A having been already reversed by making the debit -- no further recovery called for.P.S.L. Holdings Ltd. v. CCE, Rajkot, 2003 (156) ELT 602 (Tri-Mum) Wherein it was held that by utilisation of credit for payment of duty which was required to be paid, credit was effectively reversed and revenue cannot once again ask for reversal of credit.

3. Shri P.M. Rao, Ld. JDR appearing for the Revenue pleaded that since the appellants have taken the credit in RG-23 A register on the basis of the invoices, which were issued more than six months prior to the date of taking credit, for which the appellants were not eligible to take credit as per proviso to Sub-rule (2) of Rule 57G at the relevant time. The invoices were issued by the input-supplier on 21.2.95 whereas the credit was taken in November 1995. The appellants were not entitled for this credit. Therefore, the department issued show cause notice for recovery of this amount. He relied on the decision of the Supreme Court in case of Osram Surya (P) Ltd. v. CCE, Indore, 2002 (81) ECC 465 (SC) : 2002 (142) ELT 5 (SC), wherein it was held that availment of credit within the introduction of time limit does not take away any vested right. It is only the time limit within which the said right is to be enforced. Hence amendment is prospective in effect.

4. I have carefully considered the submissions made by both the sides.

I find that the Commissioner (Appeals) has given the findings that the appellants took credit on 1.11.95 on the basis of the invoices issued by the supplier of the inputs on 21.2.95. He observed that in view of the Supreme Court's decision in case of Osram Surya (P) Ltd. (supra), credit cannot be taken after a lapse of six months from the date of issue of invoice. I find that this finding of the Commissioner (Appeals) is correct in law. Regarding the other issue raised by the appellants that they have cleared the goods on payment of duty under Rule 57F1(ii), they have already paid the duty on the goods and they are not liable to make any further reversal, I find that the Commissioner (Appeals) has given the finding that this will not alter the situation as the credit was taken by the appellants in 1995 whereas they had returned the goods under Rule 57F1(ii) to the same supplier in 1997 on payment of duty. I find that the findings of the Commissioner (Appeals) are correct in this regard also and the show cause notice was issued to the appellants on 2.4.96 and the show cause notice related only for denial of credit to the appellants on invoices which were issued much before six months from the date of taking credit. Since the show cause notice related only to this issue, the decision also has to be taken only on this issue. The clearance of the inputs by the appellants in 1997 has nothing to do with denial of the credit in 1995 on the invoices which were more than six months old form the date of taking the credit. Therefore, the Commissioner (Appeals) has correctly upheld that the credit is not available to the appellants and the subsequent clearances by the appellants after the issue of the show cause notice has nothing to do with the charge levelled in the show cause notice, The case laws relied upon by the appellants are not relevant in the present case as in this case, the issue is limited only to taking of credit without authority of law and not allowing any exemption for recovery of credit.

5. In view of the above, there is no merit in the appeal and the same is rejected.