

Brar Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-24-2004

Reported in : (2005)(99)ECC807

Judge : M T K.C.

Appellant : Brar Industries

Respondent : Cce

Judgement :

1. Shri Ajay Jain, Ld. Advocate pleaded that the dispute is for taking credit on one invoice issued by M/s Baba Balak Nath Steel Pvt. Ltd. in the month of November, 1998. He pleaded that certificate placed at page 39 of the paper book issued by the Inspector of Central Excise, Mandi Govindgarh clearly shows that in November 1998, M/s. Baba Balak Nath Steel Pvt. Ltd. had paid duty of Rs. 1,37,225. M/s. Baba Balak Nath Steel Pvt. Ltd. were contesting the capacity fixed by the Commissioner and their case was decided by the Tribunal under Final Order No.A/718-722/2001-NB(SM) dated 27.8.2001 wherein it was held that letters issued by the Superintendent for recovery of duty short-paid in pursuance of the impugned order of the Commissioner must be set aside for having been issued without complying with the provision of Section 11A of the Act. He pleaded that against this order of the Tribunal, the department has gone in appeal before the High Court and the case is still pending there. He also pleaded that the Commissioner (Appeals) has followed the order of the Tribunal in case of M/s. Baba Balak Nath Steels Pvt. Ltd. decided by Final Order No. A/718-722/2001-NB

(SM) dated 27.8.2001. As per this order, duty already discharged by the manufacturer-supplier is appropriate duty paid on the inputs. He pleaded that since the dispute is between the supplier of inputs and the department, therefore, the present appellants, who has received the duty paid goods, should not be denied the credit.

2. Shri P.M. Rao, Ld. JDR appearing for the Revenue pleaded that on the invoices on the basis of which credit was taken, the suppliers of the goods had given declaration that "duty liability under Rule 96ZP (3) of the Central Excise Rules, 1944 is to be discharged". Shri P.M. Rao, Ld.

JDR also pleaded that as per Notification No. 58/97-CE dated 30.8.97, the requirement is that the duty has been discharged and not is to be discharged. Therefore, credit cannot be allowed to the appellants unless it is established that duty has been discharged by the supplier of the inputs. He also pleaded that since the demand of duty against M/s. Baba Balak Nath Steels Pvt. Ltd. is subjudice before the High Court, therefore, it cannot be said that they have discharged the full duty.

3. On carefully considering the submissions made by both the sides, I find that it has not been disputed that duty has been paid by M/s. Baba Balak Nath Steels Pvt. Ltd. on the capacity not disputed and upheld by Tribunal. The dispute is regarding what should be the exact duty liability between the department and the supplier, M/s. Baba Balak Nath Steels Pvt. Ltd. In these circumstances, it cannot be said that no duty was paid by the supplier and the appellants have taken the credit wrongly. Appellants have taken the credit under Notification No.58/97-CE. Duty has been paid by the supplier of input. There is a dispute about the actual duty liability for each fortnight depending upon the capacity. This issue is in dispute before the High Court.

After settlement of the dispute, Deptt. will automatically settle the duty liability, if any arising from the manufacturer-supplier.

Therefore, credit cannot be denied to the recipient of the goods, especially when it is established that undisputed portion of duty has already been paid. Therefore,

condition of Notification No. 58/97-CE is fulfilled. Accordingly I allow the appeal.

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