Singh Scrap Processors Vs. Commissioner of Central Excise

Singh Scrap Processors Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/37971

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-04-2005

Reported in : (2005)(191)ELT589Tri(Mum.)bai

Judge : A M Moheb

Appellant : Singh Scrap Processors

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant is engaged in the manufacture of MS ingots falling under Chapter 72 of Central Excise Tariff Act. He avails of MOPVAT credit of duty paid on the scrap received by him as inputs. During the period under dispute the appellant availed of credit on the strength of 10 endorsed gate passes and 44 certificates issued in lieu of gate-passes. The gate passes referred to above were endorsed by Traders and the Certificates were issued by the Central Excise Officers, who verified the original duty paying documents. Both these documents are valid documents for the purpose of taking credit.

2. It is alleged that the appellant availed credit on the strength of endorsed gate passes, which were so endorsed on the strength of, forged gate passes and availed of credit on the basis of certificates issued on the basis of fake/forged documents. During the investigation statements of the officials of the appellant company and that of the traders from whom inputs were received, were recorded. On the basis of these investigation it was alleged that credit of Rs. 8,86,162.26

taken on the strength of fake and forged documents is not admissible (Rule 57 I); penalty is imposable for taking inadmissible credit and the Plant building etc are liable to confiscation. The Commissioner (Appeals) confirmed the order of the lower authority passed against the appellant. Hence this appeal.

4. The Ld Advocate for the appellant argued that the disputed period is 1991-92 whereas the show cause notice was issued on 28/12/1995 and hence is hopelessly time barred; that no collusion/fraud etc has been established against the appellant; that the Department itself came to know of the fake nature of gate passes and the certificates issued in lieu of gate passes only after they contacted the input manufactures; that the appellant has not forged any document; that the appellant paid full price for the goods including Central Excise Duty; that the statement of Shri Kamlesh Ajmera, Proprietor of Nisha Enterprises to the effect that the appellant was paying only half of the Central Excise duty involved on the inputs is not borne out by facts as the cheques issued by the appellant revealed that full payment for the invoiced amount was made; that where reliance was kept on the statements of various suppliers that the appellant was aware of the fake nature of gate passes and certificates cross examination of these persons was denied; that the burden to prove malafides on the part of the appellant is on the Department but it has not been discharged and that the order of the Commissioner ignores the fact that the appellant followed every rule in the book while availing of credit.IDL Chemicals Ltd v. Commissioner of Central Excise, Bhubaneshwar - 1996 (88) ELT 710 (Tr) wherein the Tribunal held that extended period of limitation is not available since there is no collusion between the supplier of the inputs and the appellants before them. The Tribunal laid emphasis on the fact that payment for the inputs was made by cheque as in the present case. He relied on the decision of the Tribunal in the case of Dwarkadas Velji Talpatriwala v. Commissioner of Central Excise, Vadodara - 2002 (150) ELT 769 (Tri) wherein the Tribunal held that a certificate of a Range Superintendent further endorsed by a private party is an admissible document for the purpose of taking credit. He further relied upon the decision in the case of Meenakshi Polymers (P) Ltd v. Collector of Central Excise, New Delhi - 1996 (87) ELT 492 (Tri) wherein the Tribunal held that a certificate in lieu of gate passes was sufficient to claim Modvat credit if there has no dispute regarding the receipt and use of inputs and in their case there was no

dispute in this regard. It is contended that the Deputy Commissioner, who originally adjudicated the case ought to have done so while the show cause notice was made answerable to the Commissioner.

6. The Ld SDR, Shri Ajay Saxena argued the fake nature of transaction between the appellant and the sellers of inputs has come out in the statements of proprietor of M/s Nisha Enterprises, Jaibir Sing proprietor of M/s Jai Iron & Sheet Traders, Shri Shrinivas Sharma, proprietor of M/s Shrinivas Iron & Steel Co; that the appellant's plea he was not aware of the fact that the gate passes were fake and the certificates issued in lieu of gate passes were obtained by fraud has to be evaluated in the light of the circumstantial evidence; that payment by cheque to non-existing sellers in some cases is a relevant factor while deciding the guilty knowledge of the appellant and that the Department is not required to establish its case with unimpeachable evidence that the appellant had knowledge of the fake nature of particular transaction in a tax matter. He argued that extended period of limitation is invokable in the facts and circumstances of the case.

7. I have perused the records and considered the rival submissions. The evidence on record clearly establishes that the inputs received in the appellant's factory were not covered by the endorsed gate passes and certificates. In fact this finding is not even denied by the appellant.

What is however, disputed is that the appellant had knowledge of that fact. If he had no such knowledge extended period of limitation does not come into play. The period in dispute is 1991-92 and the show cause notice was issued somewhere in 1995. However, no finding on this issue can be given at this stage as discussed hereunder: 8. I observe that the show cause notice was issued by the Commissioner of Central Excise, Mumbai answerable to the Commissioner himself. But for some reason the Deputy Commissioner of Central Excise adjudicated the case. There is nothing on record to support that the show cause notice was modified/amended subsequently. In fact this point was taken up by the appellant before the Commissioner (Appeals). He observed thus : "As regards the appellant's contention that the show cause notice was issued by the Commissioner but adjudicated by a Deputy Commissioner it is felt that it is a technical/administrative irregularity and cannot be a legal infirmity". I am unable to agree with the Commissioner (Appeals) that it is a technical/administrative irregularity. The appellant cannot be driven to a situation where he is compelled to conduct his defence before an officer who is not entitled to conduct the proceeding as per the show cause notice itself. This goes to the root of the issue and is a legal defence. The appellant before me raised this issue in the appeal memorandum well as during the course of hearing. Ignoring this plea would mean that the Tribunal approved such proceedings.

9. It therefore, feel compelled to remand the case back with directions to have the case adjudicated by the appropriate authority namely, the Commissioner.

10. The order of the Commissioner (Appeal) is set aside by way of remand. The Department is free to adjudicate the show cause notice in terms of my observation above. The appeal is disposed off by way of remand