

Hind Spinners Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-31-2005

Reported in : (2005)(187)ELT266TriDel

Judge : M T K.C.

Appellant : Hind Spinners

Respondent : Commissioner of Central Excise

Judgement :

2. The appellants took the credit of Rs. 33,044/- accrued to them after 15-8-2000 but utilised the same for payment of central excise duty for the first fortnight of August, 2000 on 19-8-2000. The Central Excise Audit party visited their premises for audit and pointed out this mistake. They accordingly debited the amount of Rs. 33,044/- from PLA vide Entry No. 29, dated 20-9-2001 and took equal amount of credit in their RG-23A Part II account. Subsequently, the department issued show cause notice to them demanding the Cenvat credit of Rs. 33,044/- taken by them suo motu on the ground that it was taken without the strength of any prescribed document and penalty was also proposed. The Commissioner (Appeals) in his order held that the appellants utilised Rs. 33,044/- towards discharging duty liability of first fortnight of August 2000, which was accrued to them after 15-8-2000. They took this credit on being pointed out by Audit on 20-9-2001 and on the same date, they debited the same amount from PLA. He disallowed the credit to them by applying the ratio of the judgment of the Tribunal in the case of Pankaj Petropack Pvt. Ltd. v. CCE reported in 2002 (143) E.L.T. 600 (Tri. - Mumbai)].

2. The learned advocate for appellants states that the appellants have not taken a fresh credit or credit of an amount for which refund application was required. The appellants debited the required amount from PLA and same amount was taken as credit in Modvat credit account which was earlier debited incorrectly. He relied on the following decisions :-CCE, Chandigarh v. Kumar Auto Cast Ltd. [1996 (82) E.L.T. 137 (Tribunal)] where it was held that they had no doubt wrongly availed of Mod-vat credit for payment of duty on MCI inserts by debiting their RG 23A Part-II account. Once they had made good such wrong utilisation of Modvat credit by payment of duty from PLA, the RG 23A account which was debited earlier had to be restored. They are entitled for such crediting of amount in question to their RG 23A Part-II account if not already taken by them at the time of payment of duty of equivalent amount in the PLA. Indo-American Electricals Ltd. v. CCE, Bolpur. [1999 (108) E.L.T. 797 (Tribunal)] where it was held that re-crediting of the amount cannot be denied only on the ground of non-seeking of permission of the Astit.

Commissioner. Visakhapatnam Steel Plant v. CCE [2002 (149) E.L.T. 708 (Tribunal)].

where it was held in Para 7(c) that correction of accounting entries are required to be made as per Rule 226 (ii) with sanction of and in presence of proper officer.

3. On considering the facts of the case, I find that in this case PLA debit by the appellants and taking credit of equal amount in RG 23A Part-II is simply an accounting act and it was done on direction of Central Excise audit party. It is not the case that any excess credit was taken by the appellants. The original credit was taken by them on inputs when goods were received. Since the credit in dispute was wrongly debited by them as according to the audit party it was required to be debited from PLA, they debited the amount from PLA and credited equivalent amount in RG 23, Part-II before audit party. Therefore in such a situation, where only accounting adjustments are being done, there was no reason for seeking any permission from the department. The ratio of the decision of the Tribunal in the case of Pankaj Petropack Pvt. Ltd. (supra) is not applicable in this case, as in that case, the excess duty paid by the appellants was taken credit without filing a refund claim. In the present case, it is not the question of excess

payment or short payment, it is only a question of debiting an amount from one account and crediting the equivalent amount in the other account. If the debit is accepted by the department from PLA then there is no reason to deny them the credit in RG 23A, Part-II Account. I, therefore, find no merit in the impugned order and same is set aside.

The appeal is allowed.

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