

Commissioner of C. Ex. Vs. Sadashiv Casting (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-25-2005

Reported in : (2005)(187)ELT381TriDel

Judge : A T V.K.

Appellant : Commissioner of C. Ex.

Respondent : Sadashiv Casting (P) Ltd.

Judgement :

1. These three appeals are filed by Revenue against Order-in-Appeal No.1202-1204/03, dated 9-12-2003 by which the Commissioner (Appeals) has set aside the demand on the ground that the extended period of limitation is not invocable against the respondents, M/s. Sadashiv Casting (P) Ltd. 2. Heard Shri P.M. Rao, learned D.R. and Shri Nand Kishore, learned Advocate. The respondents manufacture steel ingots and availed Modvat credit of the duty paid on inputs, namely, M.S. Scrap. The Adjudicating Authority disallowed the Modvat credit on the ground that they had availed of the Modvat credit on the basis of invoices issued by the dealers and the dealers had issued the invoices on the strength of fake invoices; that one set of invoices received by the dealer showed clearance of M.S. Scrap, whereas the other set of invoices showed clearance of M.S. pipes; that the value and duty element was the same in all the copies of the invoices; that the quantity of waste and scrap was double than that of M.S. pipes; that the dealer on the basis of such invoices issued the modvatable invoices to the respondents, who took the Modvat credit; that the Commissioner (Appeals) has set aside the

demand on the ground that there was no suppression of facts on the part of the respondents since the invoices issued by the registered dealers were proper duty-paying documents as there was no dispute about the receipt of inputs and their use in the final products. It has been contended by the Revenue that larger period of limitation is invocable as the invoices, on the basis of which the respondents availed the Modvat credit, cannot be considered as valid documents as the description and quantity in the statutory invoices did not tally with each other and the invoices in the possession of the respondents are parallel invoices. It has also been contended by the Revenue that the respondents had not taken reasonable steps to ensure that the inputs, in respect of which Modvat credit is taken by them are such on which appropriate duty of excise has been paid. As they had not taken reasonable steps to show the validity of the invoice, the larger period is invocable. The submissions made by the learned D.R. are not well founded. Rule 57-I provides for issuing the show cause notice where credit has been taken wrongly within six months from the relevant date.

However, in case where a manufacturer has taken the credit by reason of fraud, wilful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Act or the Rules with intent to evade payment of duty, a show cause notice can be issued within five years from the relevant date. The burden is cast upon the Revenue to prove that there was fraud, wilful mis-statement, etc. on the part of the respondents. No material has been brought on record to suggest that there was any fraud or wilful misstatement or suppression of facts exercised by the respondents with an intent to evade payment of duty. It has not been disputed by the Revenue that the invoices, under which the respondents had received the inputs from the registered dealers, contained all the relevant information. Once the invoices, under which the inputs were received contain all the information, the respondents have not to cause further investigation to ensure that the appropriate duty has been paid on the inputs. The Revenue has, thus, failed to establish the fraud, collusion or suppression of facts on the part of the respondents. Accordingly, all the three appeals are rejected.