

Singh Scrap Processing Pvt. Ltd. Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-21-2005

Reported in : (2005)(192)ELT673Tri(Mum.)bai

Judge : A Wadhwa, A M Moheb

Appellant : Singh Scrap Processing Pvt. Ltd.

Respondent : The Commissioner of Central

Judgement :

1. As per the facts on records, the appellants are engaged in the manufacture of M.S. Billets and Ingots. The major raw material for the same is M.S scrap and Sponge Iron, on which the appellants was availing the benefit of modvat credit in terms of the provisions of Rule 57A of the Central Excise Rues, 1944.

2. The appellant's factory was visited by the Central Excise officers on 13/08/96, who conducted various checks and verifications. On physical verification of the stock of the main raw material i.e. scrap, the same was found to be 2500 M.T. The said verifications of the stock were done in the presence of authorized representative. Subsequently, also two officers of the appellants were associated and the goods were once again verified in the presence of Shri A.K. Biswas, and Shri P.K.Mishra, so as to avoid any discrepancy and it was again found that the total quantity of the scrap available in the appellant's factory was to the tune of 2500 MT. Subsequently, another chance to cross check the stock was given to Shri Dependra Singh, Director of the Company, who in his statement recorded on

14/08/96, admitted the Said shortages.

Statements of Shri A.K. Biswas, Manager was also recorded, wherein he admitted that the scrap was being procured by them from various manufactures and dealers on payment of duty and they were taking modvat credit on the same. As regards the shortages he explained that the same may be accumulated shortages for the past four years having occurred on account of transit loss, storage loss and excess process loss. However, he accepted the liability to pay duty on the shortages and also reverse an amount of Rs. 5 lakhs (Rupees five lakhs only) vide T.R.6 Challan No. 114/23 dated 24/08/96. Subsequently, statements of the Managing Director as also the other persons were recorded, wherein it was accepted that there was a shortage of 1638 MT of scrap and they were ready to discharge the duty burden on the same.

3. On the above basis, show cause notice dated 15/07/97 was issued to them proposing reversal of modvat credit of Rs. 14,74,200/- (Rupees fourteen lakhs seventy four thousand two hundred only) availed on the short found inputs as also for imposition of penalty and confirmation of interest.

4. The appellants during the adjudicating proceedings, though admitted the shortages but attributed the same towards accumulated shortages and to the fact of mis-handling of the scrap. They contended that for charging the furnace, the scrap is lifted in heaps from the scrap yard with the help of overhead crane and fed into the furnace for melting.

The scrap so lifted is only measured by visual inspection and serves as a rough estimate. It was in these circumstances that quantity of scrap short found must have been lost. They also take a hypothetical figure of 4 to 5% towards burning loss which figure may be more than that. The non recoverable loss is usually 5 to 15%. They also submits that there was no evidence to show clandestine removal of raw materials and the revenue cannot, as such confirm the demand of duty against them.

5. The adjudicating authority did not accept the above contention of the appellants and by observing that the appellants having taken the benefit of the modvat credit

on the scrap, were under a legal obligation to account for the same. No valid explanation has been forwarded by the appellants. The appellants are already claiming the process loss and as such, the appellant's plea that the process loss may be higher than the one claimed by them, cannot be accepted at this stage. Accordingly, he confirmed the demand and imposed penalty of identical amount upon the appellants under the provisions of Rule 57-1(4) of the Central Excise Rules, 1944. In addition, personal penalty of Rs.50,000/- was imposed upon Shri. Deependra Singh, Director of the company under the provisions of Rule 209A of the Central Excise Rules, 1944.

6 Shri. Mayur Shroff, Ld. Advocate appearing for the appellants submits that simply because there was a shortage of modvatable inputs, the same cannot be taken as removal of the inputs from the appellant's factory Without there being any evidence to that effect produced by the revenue. For the above proposition, he also refers to various decisions of the Tribunal to the effect that weighment of the stock on estimation basis does not reflect the actual shortages and the duty based upon the visual examination without actual weighment cannot be sustained.

7. Countering the arguments, Ld. DR submitted that it is not a case of shortage of final products for which the onus lies very heavily upon the revenue to prove clandestine removal. For the shortages of modvatable inputs, the appellants are under legal obligation to account the same and offer a plausible explanation for the shortages. As regards the weighment of the raw materials he submits that the same was done not once but twice in the presence of the appellant's representative and the Managing Director of the company was also asked to explain the shortages, on the next day of the visit of the officers.

The Managing Director, Shri Deependra Singh accepted such shortages and also agreed to pay the duty. In these circumstances, it is not open to the appellants to challenge the weighment.

8. We have considered the submission made by both sides. The shortages of the modvatable raw materials i.e. MS scrap, as detected by the visiting staff was to the tune of 1638 MT. The total value of the said scrap is to the tune of Rs. 98,28,000/-. The appellant's main contention is that such loss was accumulated loss of the

preceding four years and might have been on account of mis-handling of the same at various stages of manufacture. We do not find much force in the above contention of the appellants. They were already claiming a burning loss of 4 to 5%. It is not possible for any manufacturing unit to suffer loss of raw materials worth of Rs. 1 crore (approximately), without being aware of the same and without having any accountal of the same.

The appellants, who have taken the benefit of the modvat credit on the raw materials and if the same has been found as not properly accounted for, it is for them to explain the shortages. The revenue cannot be expected to discharge its burden of prove to show that such raw materials has actually cleared by the appellants after availing the benefit of the modvat credit. The mandatory requirements of provisions of modvat rules require the assessee to properly account for the receipted raw materials and to reflects its utilization in the records.

At this stage, it may be useful to refer to Hon'ble Supreme Court's observations in the case of Collector of Central Excise, Jaipur v. Raghuvar (I) Ltd. for this purpose, the irregularity and impropriety committed by the manufacturer in maintaining the accounts and the error in the calculation of the credit said to have been earned by him is pointed out, and the manufacturer is only directed to reverse the credit so wrongly and undeservedly made by readjustment and if need be, to recover the amount equivalent to such credit wrongly availed of and disallowed by the proper officer. The recovery of credit availed of and utilized in inter breach of the faith and mutual trust and confidence which is the *raison d'etre* for the proper and successful working of the modvat scheme and that too in gross violation of the mandatory requirements necessarily to be fulfilled before even claiming or availing of such benefits cannot be said to be the same as the demand for payment to be made under Section 11A of the Act of any excise duty not levied or paid or has been short-levied or short paid. They fall into two distinct and different categories altogether with basic as well as substantial differences to distinguish them from each other. As a matter of fact, Rule 57-I envisages disallowance of the credit and consequential adjustment in the credit account or the amount current maintained by the manufacturer and if only any such adjustments are not possible proceed to recover the amount equivalent to the credit illegally availed of. Consequently, the

situation postulated to be dealt with under Rule 57-I cannot be said to involve a case of manufacture and removal of excisable goods without subjecting such goods to levy or payment of the various nature and category enumerated in Section 11A of the Act on its own terms will have no application or operation to cases covered under Rule 57-I of the Rules.

9. Inasmuch as no plausible explanation is coming forth from the appellants so as to explain the input shortages in question, we do not find any justifiable reason to set aside the denial of the credit.

Accordingly, an amount of Rs. 14,74,200/- is confirmed against the appellants. However, as regards the personal penalty, keeping in view that the appellant have deposited an amount of Rs. 5.00 lakhs even before the issuance of the show cause notice, we reduce the penalty to Rs. 3.00 lakhs (Rupees three lakhs only) Separate penalty of Rs. 50,000/-imposed upon Shri Deependra Singh, Managing Director under the provisions of Rule 209A of the Central Excise Rules, 1944 is however set aside. But for the above modification in the quantum of penalty, the appeals are otherwise rejected.

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