

Gail (India) Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-10-2005

Judge : S Kang, Vice

Appellant : Gail (India) Limited

Respondent : Cce

Judgement :

2. Appellant filed this appeal against the order in appeal passed by the Commissioner (Appeals) where by the benefit of MODVAT credit was disallowed only on the ground that invoice on the strength of which credit was taken was unauthenticated.

3. The Contention of the appellants is that they received the inputs from Bharat Petroleum Corporation Limited. The goods imported and supplied to the appellants under the Bharat Petroleum Corporation Limited. The appellants availed the credit and Revenue issued a show cause notice for denial of the credit, as the invoices were unauthenticated. The contention is that as per the provisions of Rule 57G(2)(h) of the Central Excise Rules provides that in case of an invoice issued by the importer registered under the Rule 174, credit can be taken on the strength of invoices which is duly authenticated by the proper officer. The rule is amended by the Notification No. 7/99-CE (NT) dated 09.02.99 to the effect that credit shall not be denied if all the particulars mentioned in the invoice are not mentioned therein if such documents contains details of payment of duty, description of goods, assessable value name and address of the factory or the warehouse. The

Contention is that this amendment is applicable to the pending cases also. The appellants relied upon the Larger Bench decision of the Tribunal in the case of Kamakhya Steels (P) Ltd. C.C.E., reported in 2000 (121) E.L.T. 247 (Tribunal). The Central Board of Excise and Customs issued a Cir. No. 441/7/99-CX dated 23.02.1999 whereby it has been clarified that before issuance of show cause notice wrong availment of MODVAT credit on procedural ground. The Assistant Commissioner conducted an enquiry with regard to the duty paid nature of the goods. The contention of the appellant is that the supdt. Of Central Excise jurisdiction over the appellant factory made an enquiry from the jurisdictional superintendent of Bharat Petroleum Refinery and vide letter-dated 20.04.99 confirmed that the inputs received by the appellant from Bharat Petroleum Corpn. Ltd. are duty paid. In these circumstances, the contention is that credit cannot be denied.

The contention of the Revenue is that as per the requirement of Rule 57G of the Central Excise Rules, the invoices on the strength on which the credit has been taken should be duly authenticated by the proper officer. In the present case the appellants are not disputing the fact that invoices are not authenticated, hence credit was rightly claimed.

The Revenue relied upon the decision of the Tribunal in the case of Suraj Diamonds (India) Ltd. v. Commissioner of Central Excise, Jaipur, reported in 2001 (137) E.L.T 227 (Tri-Del.) where the credit was denied when it was taken on the invoices, which were not authenticated.

5. The only issue is involved in this appeal is whether the credit availed by the appellant on the strength of invoices which were not authenticated by the proper officers are liable to be set aside.

Revenue relied upon the decision of the Tribunal in the case of Suraj Diamonds (India) Ltd. v. Commissioner of Central Excise, Jaipur (Supra) whereby the credit was denied. The Rule 57G has been amended by the Notification No. 7/99-CE (NT) dated 9.2.99 to the effect that the credit shall not be denied on the ground that any of the documents specified under Sub-Rule-3 of Rule 57G of the Central Excise Rules, does not contains al the particulars if such documents contains

details of payment of duty, description of the goods etc. This amendment was not noticed by the Bench while passing the order in the case of Suraj Diamonds (India) Ltd. v. Commissioner of Central Excise, Jaipur (Supra). I further find that Board issued a Circular dated 23.2.99 whereby the position in respect of the Notification No. 77/99-CE (NT) dated 9.2.99 is explained for ready reference. The Circular is reproduced below: "I am directed to refer to Notification No. 77/99-CE (NT), dated 9.2.99 issued to amend Modvat Rules. The aforesaid notification has been issued to insert Sub-rule (11) Rule 57 G and sub-rule (13) in Rule 57T of the Central Excise Rules, 1944 so as to empower the Assistant Commissioner of Central Excise having jurisdiction over the factory of the manufacturer to allow credit of duty paid on inputs/capital goods ignoring minor procedural lapses in filing the declaration or in the invoice/document based on which credit is to be taken. However, the Assistant Commissioner should ensure that inputs/capital goods have suffered duty and are being used/are to be used in the process of manufacture. The assistant Commissioner also required to record the reasons in file for allowing Modvat credit in each case.

2. The Assistant Commissioner, before issuing Show Cause Notice for wrong availment of Modvat credit by the assessee on any procedural grounds, shall conduct enquiries with regard to duty paid nature of the goods as the suppliers send, ensure that necessary information as mentioned in the Notification are available on the invoice and satisfies himself whether the goods have been used or are intended to be used as contemplated in the Modvat Rules. In case the assessee's invoice contains the details viz. description of the goods, assessable value, name and address of the factory or warehouse where the goods are to be received, and if the assessee has filed a declaration as contemplated in the Modvat rules, the Assistant Commissioner having jurisdiction over the factory would allow the credit of duty so paid after making enquiries as above.

3. It should hereafter be ensured that Show Cause Notices are not issued for procedural lapses as mentioned in the Notification without making proper enquiries. Wherever the Assistant Commissioner, after making due enquiry, is satisfied that the Modvat credit taken by the assessee is incorrect; adjudication proceedings in the normal course should be initiated. Efforts, however, should be

directed toward reduction of litigation.

It is also contended by the Revenue during arguments that the amendment made Notification No. 7/99- CE (NT) is in respect of the documents specified under Rule 57G of the Central Excise Rules and if, the documents does not contain all the particulars. The contention of the Revenue is that when the document is not valid document the provisions of amended rule are not applicable. I find that the Board vide Circular dated 23.02.1999 that credit shall not be denied for procedural laps and this amendment is applicable to the pending cases also. The Board clarified that in case assessee's invoice contains the details i.e.

description of goods, assessable value, name and address of the factory or warehouse, where the goods are received, the Assistant Commissioner having jurisdiction of the factory would allow the credit of duty so paid after making enquiries. In the present case, the invoices contain all these particulars. Necessary enquires were also made from the jurisdictional Superintendent of Bharat Petroleum Corporation Limited, which shows that goods are duty paid. In view of the amendment of Rule 57-G and in view of the Board Circular, the denial of credit merely on the ground that invoices are not authenticated if other particulars are available in the invoices and verified by the authorities, the credit cannot be denied. The impugned order is set aside, the appeal is allowed.

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