

Flex Engg. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-2005

Reported in : (2006)(105)ECC180

Judge : S T T.V.

Appellant : Flex Engg. Ltd.

Respondent : Cce

Judgement :

1. The appellants, M/s Flex Engg. Ltd., have been availing modvat credit on inputs and capital goods. A show cause notice was issued to them on 01.06.1999 on the ground that three impugned invoices issued by M/s Bansal Ispat, Ghaziabad, were not proper documents for availment of modvat credit. The said show cause notice also placed reliance upon another show cause notice dated 17.02.1999 issued to M/s Bansal Ispat, Ghaziabad and M/s Ajay Steel, Ghaziabad, who were the first and second stage dealers respectively from whom the goods were procured by them Page 0182 under the invoice issued under Rule 57-GG. The Deputy Commissioner in his order-in-original placed his reliance upon another order-in-original No. 77/99 dated 14.09.1999 passed by the jurisdictional excise authorities against M/s Bansal Ispat, Ghaziabad and M/s Ajay Steel, Ghaziabad, at the back of the appellants in violation of principles of natural justice. Based on this earlier order-in-original, the Deputy Commissioner disallowed the modvat credit to the appellants in this case mainly on the ground that invoices issued by M/s SAIL to M/s Ajay Steels, Ghaziabad, were not proper documents and hence subsequent

invoices issued by these parties to the appellants were also not proper documents for the purpose of availment of modvat credit. Aggrieved by this order, the appellants approached the Commissioner (Appeals), who vide his order dated 30.10.2003 upheld the denial of modvat credit. Being aggrieved with this order, they are here before the Tribunal. Their main contention is that, the duty paid goods have been received by them in their factory vide three impugned invoices issued by the second stage dealer, M/s Bansal Ispat, and that the goods in question have been utilized by them in their factory in relation to the manufacture of dutiable final products, which fact is not disputed by the Department. In support of their claim, the Company's representative relies upon the following case laws :Shree Krishna Rolling Mills Ltd. v. CCE, Jaipur, . An order of the Tribunal in an earlier case viz.

CCE, Jaipur v. KEC International Ltd., has nestled against this order which reads as under : I have considered these submissions. It is not in dispute that the respondents have availed the Modvat credit on the duplicate copy of the invoice which is in conformity with the provisions of the Rules cited supra. Therefore, there is no warrant to deny the modvat credit to the respondents for violation of any rule since no violation of any rule has been committed by them. If it is the case of the Deptt. That the SAIL depot as a dealer have committed any irregularity in passing off the modvat credit to the manufacturers then they should have been made party to the proceedings on any other section as per the provision of the law could have been taken against them. In the present case as a receiver of the invoices there is no violation of any rule committed by the respondents and therefore, the modvat credit has been rightly allowed to them by the lower appellate authority. Yak Paints (P) Ltd. v. CCE, Noida, 2004 (62) RLT 862, wherein it has been held that, no credit can be denied to appellants merely because their dealer was not able to the produce duplicate copy of manufacturer's invoice. The Tribunal also observed that the fact that the registered trader had been issued with Show Cause Notice for disallowing the modvat credit, is of no relevance especially when in the Show Cause Notice the present appellants were never made as a party.

2. Further the learned representative of the Company relies upon the language of Rule 57-I(i) which stipulates that, where credit of duty paid on inputs has been

taken on account of an error, omission or mis-construction on the part of an officer or a manufacturer or an assessee, the proper officer may within six months from the date of filing the return can raise a demand, whereas in their case he argued that there was no error, omission or misconstruction on their part, and hence this Rule cannot be invoked against them. In support of his contention, he also relies upon the case of R.S. Industries and Ors. v.CCE, New Delhi-I, 2003 (55) RLT 640 (CESTAT-Del), wherein it has been held that, once the Revenue is not disputing the receipt of the goods under the cover of invoices by the appellants which contained duty paying particulars, the modvat credit cannot be denied to them in such circumstances as in the present appeal.

3. The learned JDR, however, distinguishes the case law in respect of R.S. Industries and Ors. v. CCE, New Delhi-I, supra, from the present case, stating that, in the said case, demand was raised against the first stage dealer as the credit taken by him was disallowed. On this ground itself he questions, how logically a person down the line could take a credit, particularly even when at the very first stage itself, the credit could be disallowed by the Department.

4. I have examined the case records and heard both sides at length.

Relying upon the decisions of this Tribunal in the case of Shree Krishna Rolling Mills Ltd. v. CCE, Jaipur, R.S. Industries and Ors. v. CCE, New Delhi-I, supra, and also after carefully considering the underlying concept and construction of a legal frame thereof as manifested in Rule 57-I of the Central Excise Rules under which the demand has been made here, I find that the appellants' contention is quite acceptable. Even though one could agree theoretically that the denial at first stage should flow down to subsequent stages in the modvat chain, such hairsplitting logic should give way to the imperative needs of administrability and simplicity which also form the part and parcel of the canons of taxation. As there no error/omission/misconstruction has been alleged by the Revenue, in this case against the appellants, no demand becomes sustainable under Rule 57-I. I, therefore, set aside the order of the Commissioner (Appeals).