

Vinitec Electronics (P) Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-01-2005

Judge : S T T.V.

Appellant : Vinitec Electronics (P) Ltd.

Respondent : C.C.E.

Judgement :

1. This is an appeal filed by Vinitec Electronics (P) Ltd. against the order-in-appeal passed by the Commissioner (Appeals), Delhi-II. The appellants are engaged in the manufacture of U.P.S. availing Modvat credit on inputs received by them alongwith duty paying documents. They are maintaining the prescribed records. On 27.9.96, Central Excise Officers visited their factory seized records and one number of UPS on the ground that the same was found in excess of the last balance recorded in RG.1(stock) register. The panchnama drawn had mentioned that the stock of inputs recorded in R.G. 23A Part I was also not available in the factory premises for physical verification. (According to the appellant, no copy of this panchnama was made available to them on the date of its preparation). However, the officers recorded the statement of Shri S.L. Singhal who is also a consultant apart from being authorized signatory to the appellants. In the statement. Shri Singhal had stated that he could not get the R.G.23A Part-I register checked at all physically as it was not in his knowledge. According to the appellant, on the very next day, the Central Excise officers visited their premises and helped them in the preparation of a new register in lieu of the seized registers

containing the balance drawn in the old register which was duly authenticated by the Central Excise Officers. Not only the initials of the officer but also a rubber stamp "CE MOR-24 MOD-V New Delhi" alongwith opening balance was incorporated.

Subsequently, a SCN was issued to the appellants on 26.3.97 alleging that they had clandestinely cleared the raw-materials valued at Rs. 21,81,432/- and involving Central Excise Duty of Rs. 2,47,234/- without accounting for in the statutory records. In the first order-in-original dt.22.2.99, Dy. Commissioner held that the party did not produce the raw-materials lying in stock as RG.23A Part-I although the assessee had stated that the said raw-materials were verified by the Range Officer the next day and found in order.

2. Being aggrieved, the assessee went in appeal before the Commissioner (Appeals). The Commissioner (Appeals) in his first order-in-appeal dt.20.2.2001 observed this: The appellants had taken the plea before the adjudicating authority that the inputs found short were found in stock by the Range Officer the very next day, but he did not ask the appellants to substantiate their claim and did not give any findings on the same. As per the RG-23A Pt.I register produced by them at the time of personal hearing, their contention, prima-facie, appears to be correct.

Accordingly, I set aside that portion of the Order-in-Original disallowing the modvat credit of Rs. 2,47,234/- and also set aside the penalty of Rs. 2,90,000/- corresponding to the offence of short accountal of the inputs remand the matter for a fresh decision on the subject after taking into account the documentary evidence produced by the appellants. The appeal is disposed off accordingly, partially by way of remand.

3. The adjudicating authority to whom the matter was remanded in the second order-in-original dt.14.12.01 relied upon the seizure report AE-II while confirming the demand without any cross examination of range staff not giving adequate reasons on the issue raised by the Commissioner(Appeals). Again the party went in appeal before the Commissioner(Appeals) who vide (second) order-in-appeal dt.21.10.03 plainly endorsed the decision of the lower authority with remarks that initials made in Col. 14 without name and stamp of the officer on those pages does

not allude to the fact regarding physical verification stock of raw-material as claimed by the appellants. She also held that balances in RG 23A Part I were not checked physically at all as claimed by the appellants.

4. Ld. Advocate to the appellants points out that while passing these orders, principles of natural justice have not been complied with. The appellants have not been given the copy the AE-II based on which the original authority had concluded that there was clandestine removal. No copy of the Panchnama was also made available to them. Further, without allowing them even to cross examine the officer who had incorporated his initial in the new register, the Deptt. has presumed and assumed and passed an order adverse to them. In this context, he relies upon the following case laws: Shree Extrusion Ltd. v. CCE, Rajkot 2005 (126) ECR.444 (Tri.-Bom.) The Tribunal held that mere shortage is not a proof that goods have been removed. Durga Trading Co. and Ors. v. CCE, Lucknow 2003 (59) RLT.273 - para 9 of the said order calls for tangible evidence to prove clandestine removal.

5. Ld. Authorised Representative of the Deptt. contends that Central Excise Officers have followed the normal procedure in this case and what has been done here is just an attestation of the records and it cannot be construed that stock checking has been done by them while authenticating the records. According to her, the statement recorded by Shri Singhal is relevant here.

6. Ld. Advocate recalls that copies of RG.23A Part I & II alongwith monthly returns have been duly submitted by the appellants before the date of drawl of panchnama as well as for the subsequent period when the new register was prepared. Had the new register contained any discrepancy, the officers who verified it subsequently should have pointed out the error which was not the case here.

7. Ld. Authorised Representative of the Deptt. points out that AE-II report does not give the information whether the officers visited their premises next day or not. She says that the appellants were functioning under the Self Removal Procedure and hence they were responsible for the correctness of their assessment.

8. I have examined the case records and heard both sides. It is apparent from the records that the authorities below have not complied with the principles of natural justice while passing their orders. For instance the second order-in-original of the Addl. Commissioner dt.

14.12.01 has incorporated a new piece of evidence namely AE-II report which neither appealed in the allegations contained in the SCN nor a copy of which was made available to the appellants for preparing their defence. Ld. Addl. Commissioner without giving reasonable opportunity to the appellants by way of cross-examination of the officers who had authenticated RG.23A Part I, came to a hurried conclusion that at no stage the balances in the register were checked physically. I, therefore, set aside the orders of lower authority and remand the matter back to the original authority with the direction to have a fresh look at the whole event in the light of our observations and after affording full opportunities to the appellants to defend themselves, pass necessary orders on merits and in accordance with law.

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