

**Cce Vs. Modern Steels Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-15-2005

**Reported in :** (2006)(105)ECC161

**Judge :** M T K.C.

**Appellant :** Cce

**Respondent :** Modern Steels Ltd.

**Judgement :**

1. This appeal is filed by the Revenue on the ground that the respondent had imported metal scrap through Kandla port and they filed Bill of Entry Page 0163 for clearance of the same on 12.1.96 and paid the duty on 20.1.96. The respondent received different quantities of the goods assessed under the Bill of Entry No. 378 dated 12.1.96 on 21.8.96 & 7.11.96. It was alleged by the Department that since the credit was taken after expiry period of six months from the date of Bill of Entry, the credit was not legal in view of Rule 57G(5) of Central Excise Rules, 1994 at the relevant time. The case was adjudicated by the Dy. Commissioner, who disallowed the credit of Rs. 92,131.97 to the respondent. The Commissioner (Appeals) however reversed the order of the original authority and allowed the credit on the ground that the contention of the appellant; is that the imported scrap had been cleared by the Customs authorities in piece-meals in view of the procedure laid down by this Customs authorities at Kandla port and as such the material reached the factory premises on 20.8.96 and 18.9.96. The credit was taken on 21.8.96 and 7.11.96. In case of Phoenix Industries Ltd. where it was held

that "the credit to be taken only when the goods are received in the factory after release from custody of custodian, date of clearance of goods from Airport Authority to be taken as relevant date".

2. It was contended on behalf of the Revenue that the Commissioner (Appeals) erred in allowing the Modvat credit on the ground that the date of clearance of the goods is to be taken as relevant date for computing date of six months for taking Modvat credit. In the present case, the gate passes were issued by clearing agent of the party which were not specified under Rule 57G(2) of the Central Excise Rules, 1944 as covering document for the purpose of availing Modvat credit. The triplicate copy of Bill of Entry, which is the relevant document in the instant case, gives the date of Bill of Entry and the credit should be taken within six months from that date. It was also pleaded that the goods are cleared from the Customs charge after payment of duty. If there is any objection then it is recorded in the Bill of Entry.

However, the adjudicating authority in his order has mentioned that the date of clearance (i.e. out of charge) of the assessed and duty paid goods by the proper officer of Customs is not on record but it is likely to be either date of payment of duty itself or one/two days subsequent to date of payment of duty after the goods inspected/examined. The gate passes on which the respondents are relying were not issued by the Customs authorities nor the goods were cleared under those gate passes from the Customs charge. Those gate passes were issued by M/s. A.V. Joshi & Company, a clearing agent. From this it is clear that the goods were kept by the clearing agent in his godown after clearance from the Customs and these were being transported by the respondent according to their requirement.

3. On behalf of the respondent, it was pleaded that since the original authority has not given the exact date of clearance of the goods from the Page 0164 Customs, therefore, he has proceeded on a presumption. He relied on the decision of the Tribunal in the case of Phoenix Industries Ltd. where it was held that "Sub-rule 3 of Rule 56G provides that no credit under Sub-rule (2) shall be taken by the manufacturer unless inputs are received in the factory under cover of any of the documents as specified. Obviously, the appellants could not have taken the credit

unless the goods were received in their factory and the goods could not have been received in the factory unless they were released from the custody of the custodian. Under these facts, the interpretation of Sub-rule (3) and (5) of Rule 57G call for harmonious interpretation. Since the goods were cleared on 16.6.95 from the custody of the Airport Authority, this date is to be reckoned for computing the period of six months for the purpose of the said Sub-rule (5) of Rule 57G". He, therefore, pleads that in view of this, the period of six months should be counted from the date of receipt of the goods in the factory for taking credit.

4. I have considered the submissions. I find that in this case the goods were assessed to customs duty and duty was paid on 20.1.96. There is no claim by the respondent that these goods were detained by the Customs authorities. The only claim is that the exact date of "out of customs charge" is not mentioned. I find that when there is no detention of the goods by customs, the adjudicating authority has correctly taken that the goods must have cleared within a day or two from the date of payment of duty. The respondent have failed to show that the goods were not cleared by customs after they have paid the duty. No evidence of any detention by customs authorities was shown.

Therefore, I find that the Commissioner (Appeals) has wrongly applied the ratio of decision in case of Phoenix Industries (supra), that the date should be reckoned on the basis of the date of receipt of the goods in the factory after release from the custodian. In case of Phoenix Industries (supra) it was held that time of six months is to be computed from the date of clearance of goods from custody of Airport authority i.e the Custodian. In the present case, the goods were not detained after assessment. Therefore, it is not a marginal delay hut the delay is of one month in one case and about four months in other case for taking the credit. The goods were cleared from the godown of the clearing agent and not from the Port Trust Authorities or Customs authorities. The documents on which the credit taken were also un-authorized. In these circumstances, the order of the Commissioner (Appeals) cannot be sustained.

5. I, therefore, set aside the order of the Commissioner (Appeals) and allow the appeal of the Revenue.

