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Commr. of Central Excise Vs. Hindustan Engineering and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Jan-05-2006

Reported in : (2006)(106)ECC354

Judge : J T V.K.

Appellant : Commr. of Central Excise

Respondent : Hindustan Engineering and

Judgement :

1. The brief facts of the case are that the respondent has availed irregular modvat credit during the period of 1995-96 on the basis of duty paying documents of various steel materials fraudulently prepared and supplied by a registered dealer without actually supplying the corresponding materials. During the course of investigation by DGAE against some registered dealers of iron and steel products, it was found that the input materials manufactured and cleared by prime manufacturers are used by the small scale sector/evasion prone industries by purchasing them in cash without accountal. The corresponding duty paying documents alone are procured/purchased by the registered dealers who take corresponding credit in RG 23D Account and then issue their own modvatable invoices in their favour of other manufacturers. In fact, they transact only with the duty paying documents without dealing with the corresponding input materials. The recipient manufacturers avail of modvat credit on the strength of such fraudulently procured documents against purchase of bazaar scrap. In this way the respondents have contravened the provisions of Rule 57A, 57F, 57G of the

Central Excise Rules, 1944. After investigation, a show-cause notice was issued by the Revenue. The Additional Commissioner confirmed the duty and also imposed a penalty of Rs. 1,00,000/- (Rupees one lakh only) on the respondents in terms of Rule 173Q of the Central Excise Rules, 1944.

2. The respondents went to an appeal to the Commissioner (Appeals) who in his order allowed the appeal with consequential relief to the respondents, if any.

3. The Revenue has come in appeal being aggrieved with the decision of the Commissioner (Appeals).

4. Heard Shri Y.S. Loni, ld.JDR on the appeal filed by the Revenue. He reiterates the ground of appeal given by the Commissioner.

5. Heard Shri S.K. Roychowdhury, ld.Advocate for the respondents. He submits that in this case the duty has been paid voluntarily by the respondents before the issuance of the show-cause notice. He submits that if the registered dealer has issued an invoice without receiving the goods, it was not their fault. They have paid the money by Account Payee Cheque. The inspection and verification were not done by the Department. He further submits that since they have paid the entire duty before the issuance of the show-cause notice, they are not liable for any penalty. The respondents have contended that they have received the goods and paid for the same by Account. Payee Cheque. The Revenue has not contested the same. In this case, he relies on the Tribunal's decision in the case of Rashtriya Ispat Nigam Ltd. v. Commr. of Central Excise, Visakhapatnam confirmed by the Hon'ble Apex Court in the appeal. He also relies on the Larger Bench's decision in the case of Commissioner of Central Excise, Delhi III, Gurgaon v. Machino Montell (I) Ltd. . In view of this, he submits that the appeal filed by the Revenue deserves to be dismissed.

6. Heard both sides, it is a fact that the respondents have paid the duty amount before the issuance of the show-cause notice and in view of the Larger Bench decision quoted above, the respondent is not liable for penalty. In the case of Rashtriya Ispat Nigam Ltd., referred to above, the Tribunal has held that the penalty is not imposable under Section 11AC of the Central Excise Act as well as

under Rule 173Q of the erstwhile Central Excise Rules, 1944 when the duty has been deposited before the issuance of the show-cause notice. The Revenue went an appeal against that decision before the Hon'ble Supreme Court and the Hon'ble Supreme Court has dismissed the appeal filed by the Revenue. Thus it has become the law of land. The Larger Bench has also taken a similar view in Commr. of Central Excise, Delhi III v. Machino Montell (I) Ltd. referred to above wherein the Tribunal has held that the payment of duty before issue of show-cause notice, no penalty can be imposed under Section 11AC and no interest can be demanded under Section 11AB. Respectfully following the ratio of the Larger Bench's decision of the Tribunal and the decision of the Hon'ble Supreme Court, I reject the appeal filed by the Revenue.

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