Commissioner of Central Excise Vs. Precision Paper Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Feb-03-2006

Judge : J T V.K.

Appellant : Commissioner of Central Excise

Respondent : Precision Paper Industries

Judgement :
1. This is an appeal filed by the Revenue against the impugned Order dated 30.1.2004 passed by the Commissioner (Appeal-IV), Central Excise, Kolkata. In this case, the respondent company availed the MODVAT Credit on the invoices issued by the unregistered dealers during the period from 9.7.94 to 13.8.94. The lower authority disallowed the MODVAT Credit of Rs. 2,99,136.96 (Rupees two lakh ninety-nine thousand one hundred and thirty-six and paise ninety-six) only and also imposed an equal amount of penalty. Being aggrieved of the above decision, the respondent company had filed an appeal before the Commissioner (Appeals) who allowed the appeal of the respondents. Being aggrieved of that decision of the Commissioner (Appeals), the Revenue has come in appeal before this Tribunal. The Commissioner has observed in Para:7 of his Order as follows: The material period under allegation is a period of switchover from the GPI system of clearance to the invoice system; and the Notification No. 32/94-CE(NT) and 33/94-CE(NT) both dated 4.7.94 laid down the procedure of issuing invoices by a manufacturer, importer or registered dealers. Hence, allegation of contravention of the provisions of the aforesaid notifications read with Rule 57G is a procedural

lapse. It is well settled that substantial benefit of modvat credit cannot be denied for mere procedural infractions when all the invoices were defaced by the departmental officer and when receipt of the impugned goods in the factory and their duty paid character was not disputed. When substantial requirement of modvat credit scheme was satisfied, denial of modvat credit on procedural grounds was unjustified. I place my reliance on the decisions of the Hon'ble Tribunal in the case of Roche Products Ltd. v. CCE and Prism Cement 3. Heard Dr. I. Marianna, learned J.D.R. He submits that in this case, the invoices were issued by the unregistered dealer, and hence the finding of the Commissioner (Appeals) that the contravention of the provisions of the Notification Nos. 32/94-CE(NT) and 33/94-CE(NT) both dated 4.7.94, read with Rule 57G, is a procedural lapse, is not correct. He submits that it has been held by the Larger Bench in the case of Balmer Lawrie & Co. Ltd. v. Commissioner of Central Excise, Kanpur issuing invoices for claiming MODVAT Credit is a mandatory requirement in terms of Rule 57GG of Central Excise Rules, 1944 read with Rule 174 and do not simply relate to an area of procedure. He submits that since it is a mandatory requirement, the Order passed by the Commissioner (Appeals) be set aside and the appeal filed by the Revenue be allowed.

4. Heard Shri D.K. Dhar, learned Advocate for the respondent company.

He submits that in this case, all the invoices have been defaced by the Superintendent of Central Excise concerned. He also brings to my notice to Rule 57G where it has been laid down that the manufacturers shall have to maintain RG-23D Register (Part-I & II) and to submit the original duty paying documents along with the monthly returns to the Jurisdictional Superintendent of Central Excise, who after verification of their genuineness, shall deface such documents and return the same to the manufacturers. In view of this, Shri Dhar, learned Advocate submits that since all the invoices have been defaced by the concerned Superintendent, it is implied that their genuineness is correct. He, further, draws my attention to the judgment of the Larger Bench referred to above, wherein the Tribunal in Para: 10 has held as follows: 10. No doubt, the Revenue department, after issuance of the Notification No. 32/94-C.E. dated 4th July, 1994 and insertion of Section 57GG on its basis in the statute issued instruction bearing No. 76/94-

C.E.(N.T.), dated 8.11.94, authorising the Assistant Collector to accept the invoices issued by those unregistered dealers who subsequently procured registration by 31st December, 1994....

He also submits that in this case, all the dealers have got their registration from the Central Excise Department prior to. 31.12.94. He, therefore, contends that the Board's Circular No. 76/94-CE(NT) is binding on all the Revenue Officers, as held by the various Courts including the Honourable Apex Court.

5. I have heard both sides. I find that in this case, the Revenue has come in appeal, primarily on the point that the invoices were issued by the unregistered dealers and the Commissioner (Appeals') observation that this is only a procedural lapse, is not correct. Learned Advocate has submitted that all the dealers who have issued the invoices in this case have got their registration before 31.12.94. There is no material before this Bench to find out whether all the dealers have got their registration before 31.12.94 or not. Accordingly, I remand the matter to the original adjudicating authority to verify whether the dealers who have issued the invoices in this case have got their registration before 31.12.94. Wherever dealer has taken the registration prior to 31.12.94, as per Instructions given by the Board's Circular referred to above, the benefit should go to the respondents. On this limited issue.

I remand the matter to the original adjudicating authority. The appeal is thus allowed by way of remand.