

Cce Vs. Vma Enterprises (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-12-2006

Judge : M Ravindran

Appellant : Cce

Respondent : Vma Enterprises (P) Ltd.

Judgement :

1. This appeal is directed against order in appeal dated 19/03/2004 which allowed respondent modvat credit.

2. The relevant fact that arise for consideration are respondent availed modvat credit of input on 24/03/2000. The authorities during the checking came to the conclusion that the respondent have availed the modvat credit without filing the declaration and therefore the credit was reversed on 08/04/2000. The authorities later on while scrutinizing the quarterly RT 12 Return filed by the respondent, found that the respondent had availed the modvat credit of the same input on 31st August, 2000. The authorities issued show cause notice to the respondent for reversal of modvat credit so availed by them, on an allegation that they had re-credited the amount subsequently after the change of modvat/cenvat credit rules and illegally showing that the inputs were received after 01/04/2000. Adjudicating authority confirmed the demand and also imposed penalty. On an appeal, Commissioner (Appeal) set aside the order in original on the ground that the appellant had filed declaration of the identical item in 1999 and at the most this case can be considered as difference in classification of six digits case.

Department is in appeal against this order.

3. Learned DR submits that the respondents had mis-stated in their statutory records while availing the modvat credit second time i.e. on 31st August, 2000. It is his submission that if the respondents were aggrieved by the order of reversal of modvat credit on 08/04/2000 they should have proceeded ahead with the legal remedy available to them instead of showing receipt of the goods after the new cenvat credit rules were brought into statute. This in itself is nothing but trying to avail the ineligible modvat credit to them. It is also his submission that the declaration which has been filed by the respondent of HNP oil is totally different as the chemical composition the inputs on which the credit availed is different than HNP oil.

4. Learned advocate on the other hand submits that the whole show cause notice proceeded on the presumption that the respondent had not filed the declaration and still availed the modvat credit. He submits that the legislature in its own wisdom had amended Rule 57G by notification No. 7/99 which permitted availment of credit on inputs even if the duty paying document does not contain full details or non-filing of the declaration.

5. Considered the submissions made by both sides and perused records. I find that the issue involved in this case is regarding the denial of modvat credit to the respondent on the ground that they had, in order to avail ineligible modvat credit, indicated in the statutory returns the date of receipt of the inputs after 1st April, 2000. I gave my anxious thought to the submissions made by the learned DR on this point. I find that the respondent, when they availed the modvat credit earlier i.e. on 24/03/2000, they had correctly availed the modvat credit. The denial of the modvat credit and reversal by the authorities on 08/04/2000 on the ground that declaration was not filed by the respondents was an incorrect proposition of the law during the relevant period. During the relevant period Rule 57G(11) of the Central Excise Rules was amended and it read as under: (i) any of the documents, mentioned in Sub-rule (3) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of the goods, assessable value, name and address of the

factory or warehouse; (ii) the declaration filed under Sub-rule (1) does not contain all the details required to be contained therein or the manufacturer fails to comply with any other requirements under Sub-rule (1) : Provided that the Assistant Commissioner of Central Excise having jurisdiction over the factory of manufacturer intending to take credit is satisfied that duty due on the inputs has been paid and such inputs have actually been used or are to be used in the manufacture of final products, and such [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] shall record the reasons for not denying the credit so in each case.]J.B.M. Tools Ltd. v. Commissioner of Central Excise, Pune as reported as] had an occasion to interpret the said amended Rule 57G (as amended by Notification No. 7/99). The Division Bench in its order held as under: The amended rule which came into force from 9/2/1999 was in existence when the declarations of J.B.M. Tools Ltd. and Autoline Stampings Pvt. Ltd. were filed. SKF had filed its declaration earlier to the amendment. The reason that the Assistant Commissioner advances for not accepting the declaration is that Sub-rule (13) does not "offer any protection in cases where no declaration at all is filed". This is the argument that the departmental representative reiterates. Clause (i) of Sub-rule (13) refers to credit under Rule 57G and we are not concerned with that. Clause (ii) has two parts.

The first is applicable in cases where a declaration filed under Sub-rule (1) of Rule 57T "does not contain all the details required to be contained therein". The second deals with cases where "the manufacturer fails to comply with any other requirement." The only requirement other than the one contained in Sub-rule (1) that we are able to visualize is that of filing a declaration and obtaining a dated acknowledgement. The question of the manufacturer obtaining a dated acknowledgement does not arise unless the department chooses to issue it. The only requirement that the manufacturer is required to comply with is that of filing a declaration. In cases where a manufacturer files a declaration but it does not contain all the details, the first portion of Clause (ii) of Rule 57T(13) will apply. In other cases, where no declaration is filed at all, the second clause will apply. This is the only meaning that we are able to give to the somewhat involved wording of the Sub-rule.

7. I find that during the relevant period, even if no declaration filed by the respondents, they were eligible to avail the modvat credit on the inputs if the said inputs were received and consumed in their factory and duty paid character of the said inputs were not in doubt.

In this present case before me the authorities are not disputing the fact that the inputs which were received were duty paid in as much that they were imported by the appellant and paid duty on Bill of Entry. It is also not dispute that the inputs were received and consumed in the factory of the appellant.

8. As regards, the submissions made by the learned DR regarding the mis-statement by the respondents regarding the receipt of the material based on 01/04/2000, is not a very serious issue for denying the modvat credit to the respondent, when they are eligible for the said credit at the first instance.

9. Accordingly, in view of the fact and circumstances as mentioned above, I do not find any reason for interference in the order of the Commissioner (Appeal). Department's appeal dismissed.

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