Didar Steel Complex (P) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-10-2006

Reported in : (2006)(111)ECC525

Judge : M Ravindran

Appellant : Didar Steel Complex (P) Ltd.

Respondent : Cce

Judgement :

1. This appeal is directed against the order-in-appeal dated 27.2.2004, which upheld the order-in-original for denial of Modat credit and imposition of penalty.

2. The relevant facts that arise for consideration are that the appellants herein availed Modvat credit on the invoices issued by M/s.

Laxmi Steel. An investigation carried out against Laxmi Steel indicated that they did not have any manufacturing facility and nor were there any raw material or finished goods and they were engaged only in paper transaction. Based on such transaction, the lower authorities issued show cause notice to the appellants for denial of the Modvat credit availed by them on the invoices of Laxmi Steels. The appellants resisted the show cause notice on the ground that they have received the goods and used the same for the manufacture of the final products.

The adjudicating authority confirmed the demand relying upon the adjudication order of the Commissioner. Chandigarh, who confirmed the demand on the Laxmi

Steel. The learned Commissioner (Appeals) on an appeal also upheld the order-in-original.

3. The ld. Advocate appearing for the appellant submitted that the question of non-receipt of goods in their factory does not arise, as they had produced the evidence of goods received in their factory, issued by the three different transporters before The Commissioner. He fairly admits that this evidence was not produced before the lower authorities. He also submitted that this issue is squarely covered in favour of the appellants in the case of EM ESS Electricals v. CCE, Delhi 4. The learned DR, on the other hand, submits that it is proved that the said M/s. Laxmi Steels were engaged only in transferring the credits without transporting the materials to their purchasers. He has also referred to the order-in-original in which the Modvat credit availed by M/s. Laxmi Steels was disallowed. It is his submission that against this order, the said Laxmi Seels preferred an appeal to the Tribunal, which was also dismissed. It is also his contention that when the appellant has not received the goods on the invoices issued by M/s.

Laxmi Steels, there is no question of any credit that can be availed by them.

5. Considered the submissions made at length by both the sides and perused the records. The issue involved in this case is regarding disallowance of Modvat credit on the invoices which were issued by M/s.

Laxmi Steels. I find from the records that the appellants have produced the evidence of transportation of inputs through three different transport operators. It is on record that these transporters were not investigated nor any statements recorded. The appellant's contention that they have received the goods, based on these documents is not contradicted by the Revenue by producing any evidence except the order-in-original passed against Laxmi Steels. In the absence of any contradictory evidence, it can not be said that the appellants have not received inputs, utilised the same for manufacture the final products, neither it is brought on record that the appellant did not manufacture any final products and did not discharge appropriate duty on the final products. I find that the Division Bench's order in the case of EM ESS Electricals (supra) fully covers the issue before me. The Division Bench in its order at paragraph-6 has held as under: There is also no tangible evidence on the record to suggest that the raw material i.e. copper wire covered by the disputed 29 gate passes was neither actually received by the appellants in their factory nor utilized in the manufacture of the final product. No evidence to substantiate these facts was found from the factory premises or from the entries in the statutory records, of the appellants. Mere lack of manufacturing facilities detected by the Central Excise officers with the firms Kejriwal Enterprises and Priyanka Metal Overseas could not lead to an irresistible conclusion that the raw material covered by 29 gate passes was never supplied by them to the appellants. No presumptions or assumptions could be made or drawn against the appellants, from the enquiries conducted against the above said two firms, from whom the appellants purchased the raw material through the disputed gate passes. There is also no evidence to suggest if the goods were never manufactured by the appellants from the material received by them under the cover of the disputed gate passes. From their record, there is nothing on the record to suggest, if any clue or material was found about the actual non-receipt of the raw material by them and non-production of the final product out of that material during the period in question.

Therefore, in our view, the Modvat credit of the disputed amount couldn't be disallowed to the appellants.

6. I find that the ratio of the Division Bench's decision is fully applicable to the present case. Respectfully following the order of the Division Bench, I allow the appeal with consequential relief, if any.