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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-18-2006

Reported in : (2006)(112)ECC245

Judge : R Abichandani

Appellant : Allied Steels and Standard

Respondent : Cce

Judgement :

1. These three appeals (Excise Appeal No. 5172 of 2004 and Excise Appeal No. 5216 of 2004) have been argued together and are being disposed of by a common judgment.

2. Appeal No. 5172 of 2004 and Excise Appeal No. 5216 of 2004 are directed against the order of the Commissioner made on 26.7.2004 upholding the order-in-original made by the Joint Commissioner (Audit) by which he confirmed the demand for recovery of Rs. 1,21,359/- being the amount of modvat credit wrongly availed by the noticee No. 1 i.e.

Standard Electricals Limited, Jalandhar, under Rule 57-I of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944 and imposing penalty of the like amount on the said noticee under Rule 173Q(1)(bb) of the Rules and further imposing penalty of the like amount also on the (Noticee No. 2) Allied Steel under Rule 173Q(1)(bbb) read with Rule 209A of the said rules and charging

interest from the noticee No. 1 on the amount of modvat credit.

2. Appeal No. 5215 has been filed by the appellant Standard Electricals Limited against the order of the commissioner (Appeals) made on 26.7.2004 confirming the demand for recovery of Rs. 19,689/- being the amount of modvat credit wrongly availed by the appellant and imposing penalty of the like amount as well as charging interest thereon. It appears that no appeal is filed by the noticee No. 2 M/s Sudarshan Steels.

3. In Central Appeal Nos. 5172 and 5216, according to the Revenue the inquiries revealed that the appellants Standard Electricals Limited had purchased C.R. Coils from the other appellant M/s Allied Steel under five different invoices (Nos. 40 and 41 both dated 31.7.98, No. 56 dated 11.9.98, No. 57 dated 12.9.98 and No. 60 dated 23.9.98) and taken modvat credit in their RG23A part-II. During the enquiry, it transpired that the C.R. coils were taken from the premises of M/s RSD Steels Cutters and not from the dealer's premises. The dealer i.e. M/s Allied Steels had unloaded the goods in the premises of M/s RSD Steel Cutters and the goods were admittedly got cut there at the instance of the consignee appellant - Standard Electricals Limited. In this background, show cause notices were issued on the ground that the dealer had issued modvatable invoices in respect of consignment of C.R. coils which was not received or stored in his registered premises and, therefore, modvat credit was availed on the basis of such wrong, invalid and modvatable invoices. By show cause notice dated 15.02.2002, the appellant Standard Electricals Limited was called upon to show cause as to why the modvat credit of Rs. 1,21,359/- should not be recovered and why penalties indicated should not be imposed. Notice for penal action was also issued against the dealer M/s Allied Steels.

4. In Excise Appeal No. 5215 of 2004, the case of the Revenue was that in September, 1997, the appellant Standard Electricals Limited had availed modvat credit to the tune of Rs. 19,689/- on the inputs i.e.

C.R. Coils falling under sub-heading No. 7209.30 on the strength of invoices issued by M/s Sudarshan Steels who did not have any arrangement for the receipt, storage, and onward despatch of the said excisable goods. The said

excisable goods were bearing the description "C.R. coils" falling under sub-heading 7209.30 whereas the goods actually received by the appellant -Standard Electricals Limited in their factory premises were "C.R. sheets" falling under sub-heading 7209.20.

5. In both the appeals, the appellants have contended that merely because the registered dealer did not have arrangements for receipt, storage facility to store the C.R. coils in its registered godown, the invoices issued by such dealer did not become invalid for the purpose of availing modvat credit. It was also contended that merely because the inputs supplier did not unload the C.R. Coils, that was no ground to deny credit. Reliance was placed on the decision of the Tribunal in the case of CCE, Chennai v. India Piston Limited reported in 2000 (93) ECR 437, Kevin Enterprises v. CCE, Vadodara reported in 2000 (125) ELT 566 (Tribunal). It was also their case that the extended period of limitation could not be invoked as there was no suppression of facts on their part. It was also their case that penalty and interest were not imposable, as modvat credit was correctly taken and the conduct of the appellant was bonafide. They also relied upon Trade Notice No. 62/99 dated 6.10.99 of the Mumbai Commissioner to show that the registered dealers of metal coils could sell the goods, after decoiling and cutting the coils into sheets, from the cutter's place. It was also their case that there was no controversy regarding the actual payment of duty indicated in the invoices by the suppliers.

6. The authorities below on the basis of the material placed on record found in all these matters that the "C.R. coils" were not unloaded at the registered premises and that the dealer did not have machinery for cutting such C.R. coils into required sizes and therefore, these were got unloaded in the premises of the cutter and were taken by the appellant Standard Electricals Limited as "C.R. Sheets" from those premises on the basis of original invoices of "C.R. coils". Modvat credit was availed on the product "C.R. sheets". It was found that since the goods were lifted from the premises other than the premises of the registered dealer, these were goods other than those consigned by the registered dealer under the invoices. It was also held that the Board Circular No. 69/69/94-CX dated 24.10.94 and 107/18/95-CX dated 2.3.95 laid down that, registered dealers need to have proper godown for receipt, storage and onward despatch of excisable goods and that no

modvatable invoices can be issued without receipt of goods in the godown declared in application for registration. It was further held that issue of modvatable invoices only in respect of goods received in the registered godown, was an essential requirement of law, and invoices issued by a registered dealer, without receiving goods in his registered godown, were not valid invoices, being violative of the statutory provisions. Reliance was placed on the decision of the Supreme Court in the case of Mihir Textiles Ltd. v. CCE , and the larger bench decision of CEGAT in the case of Avis Electronics v. CCE, New Delhi. The benefit of the Trade Notice No. 62/99 dated 6.10.99 was denied on the ground that the coils were got cut by the manufacturer - Standard Electricals Limited and not by the registered dealer. It was held that the appellant - Standard Electricals Limited had suppressed the facts about the receipt of modvatable inputs from the premises other than the registered premises of the registered dealer and though they were aware about supply of inputs from premises other than the registered premises, they had taken delivery of "C.R. Coils" from premises of the cutter from whom they got the coils cut into sheets. The extended period of limitation was, therefore found to have been rightly invoked.

7. The learned Counsel for the appellant in all these appeals, appearing for both, the manufacturer and the registered dealer, has argued that the extended period was wrongly invoked because there was no intention to evade duty and there was no loss to the Revenue, since admittedly "C.R. coils" were duty paid and modvat credit could be availed by the manufacturer-purchaser who got the "CR coils" cut into sheets. He submitted that cutting of C.R. coils into sheets did not amount to manufacture. He also contended that admittedly the goods were duty paid and their lifting was the only issue. It was argued that admittedly the registered dealer had registered premises of his own.

However, only as a matter of convenience, since facility of cutting the coils was not available with the registered dealer, the goods were unloaded in the premises of the cutters, for the cutting job, and the delivery was to be taken by the purchaser i.e. Standard Electricals Limited from those premises. He submitted that mention in the invoice of the premises of registered dealer was only a bonafide procedure infringement on the part of the assessee and no penalty could have been levied on

the registered dealer for such lapse. He submitted that all the goods were entered in the statutory record and there has been no allegation in the show cause notices that the goods were not duly entered. He then argued that there was no allegation of mens-rea in the show cause notice. Mere procedure did not warrant Rule 173Q(i)(b) of the rules. He also argued that the Standard Electricals Limited should not have been penalized for wrong descriptions in the invoices prepared by the registered dealer.

7.1 The learned Counsel placed reliance on the following decisions in support of his contentions: Electro Steel Castings Ltd. v. CCE, Calcutta-III reported in 2001 (136) ELT 929 (Tri. Kolkata) was cited to point out that where the assessee availed the credit in respect of the goods which were admittedly used in relation to the manufacture of the final product, by observing that their consumption during the course of manufacture of the final product was irrelevant, the Tribunal held that as long as there was no dispute about the duty-paid character of the goods, credit cannot be denied on the ground that address of head office was mentioned in the duty paying document instead of the address of the factory. Auric Engineering Pvt. Ltd. v. CCE, Hyderabad reported in 2001 (136) 934 (Tri. Chennai) was cited to point out that where there was no duty evasion, it was held that Rule 173Q cannot be invoked for only a minor discrepancy for which Rule 226 was invokable.

(iii) The decision of the Tribunal in Parke Davis (India) Ltd. v. CCE, Mumbai-II reported in 2004 (176) ELT 340 (Tri. Mumbai) was cited for the proposition that various registers prescribed to successfully implement the modvat scheme are no doubt important and have a role to play, but when denying the credit which is otherwise due, the Commissioner laid excessive emphasis on a procedural formality. Crop Health Products Ltd. v. CCE, Meerut from paragraph 5 of the judgment that the Tribunal has been consistently taking the view that wrong mention of the address of the consignee or other similar mistakes in the duty paying documents would not stand in the way of allowing modvat credit to a manufacturer so long as it is not in dispute that the goods have been received and utilized for the manufacture of the final product. National Engg. Industries Ltd. v. CCE, Jaipur reported in 1996 (16) RLT 770 (CEGAT-NB) was cited to point out from paragraph 4 of the judgment that it was held that modvat credit cannot be

denied just because permission for removing the raw material directly to the job workers was not specifically sought for. It was held that relevant was a substantial compliance with the provisions of law and as long as assessee has substantially complied with them, benefit in accordance with the law cannot be denied for non-observance of a technical requirement. It was held that there was no allegation that the goods were not duty paid or that goods were not entitled to modvat as being not notified as inputs. *Lupin Laboratories Ltd. v. CCE, Indore* that it was well settled that what is relevant is substantial compliance with the provisions of law and as long as a manufacturer has substantially complied with the law, the benefit in accordance with law cannot be denied for non-observance of technical requirement (para 21). *Faridabad Iron and Steel Traders Association v. Union of India* reported in 2004 (178) ELT 1099 (Del.) was cited for the proposition that the mere process of cutting of C.R. coils into sheets to specific sizes did not amount to manufacture because the identity of the product remains unchanged. *Sudarshan Steels v. CCE, Jalandhar* reported in 2006 (194) ELT 52 (Tri.-Del.), was cited to point out that in similar in the circumstances where the dealers invoices were issued without bringing the goods in their registered premises and where duty was duly paid on those goods, it was held that penal provision of Rule 173Q(1)(bbb) could not be invoked, because penalty can be imposed only if he intends to facilitate the buyer to avail credit of the duty of excise which is not permissible under these rules. It was held that goods sold were admittedly duty paid and the appellant did not pass on more duty than due nor was such allegation made in the show cause notice. *N.V. Enterprises Pvt. Ltd. v. CCE, Jalandhar* reported in 2005 (191) ELT 594 (Tri.-Del.), was cited for the proposition that no penalty was imposed under Rule 173Q(1)(bbb) of the Central Excise Rules, 1944, where iron and steel consignment was not brought to the registered premises of the dealer only because of practical difficulties and was sold from the premises of cutters directly. *CCE, Jalandhar v. N.V. Enterprises (P) Ltd.* reported in 2004 (176) ELT 367 (Tri.Del.), in which the Trade Notice No. 62/99, dated 16.10.99 was consigned, was cited to point out that where a registered dealer had not received, "C.R. coils" in the registered premises but had issued invoices in respect of sheets, the Tribunal held that in view of the said trade notice, there was no merit in the contention of the Revenue that the goods in question were not brought to the

premises of the dealer.

(xi) The decision of the Tribunal in *Collector of Central Excise, Bombay-II v. Roshan Tin Printers (Tribunal)*, was cited to point out from paragraph 5 of the judgment it was held that, so long as there is no dispute that the duty paid materials received by the suppliers have come to the hands of the respondents after they are cut into sheets, the procedural non-compliance cannot be held against them for denying the substantive benefit of the modvat facility.

8. The learned authorized representative for the department submitted that the registered dealers had issued invalid invoices, because, though the goods were not received in the premises of the registered dealer and were unloaded in the premises of the cutter, they were shown to have been removed as "C.R. coils" from the registered premises of the dealer. It was also submitted that though the manufacturer - Standard Electricals Limited had got the "C.R. coils" cut into sheets at their instance and had received "C.R. sheets" in their factory, the movement of "C.R. coils" was shown under the invoice. It was, therefore, submitted that since the invoice of the registered dealer was invalid, no mod vat credit could have been availed by the manufacturer. The learned authorized representative for the department distinguished the cases cited on behalf of the appellant on the ground that in the present case the manufacturer i.e. Standard Electricals Limited had given instructions to cut the sheets and was, therefore, fully aware that the goods were lying in the premises of the "cutter" and not in the registered premises of the dealer and that the invoice showing the goods having been sent by the appellant M/s Allied Steel to the manufacturer i.e. the appellant Standard Electricals Limited as "C.R. Coils" was deliberately incorrect. He placed reliance on the Circular No. 69/69/94-CX dated 24.10.94 of the government of India, Ministry of Finance in which it was stated that registration cannot be granted to a person who does not own proper premises for conducting his business, and further that the transport documents etc. relevant for modvat credit should be shown in the records of such dealers, both while they receive the goods and also while they pass on the goods down the line to others who will, in due course, claim the modvat credit. It was also stated therein that it should be ensured that dealers registered with the Central Excise Department for the purpose of passing on the modvat credit, actually deal

in the excisable goods and were not merely money lenders or, are not fictitious entities with only a postal address. He also referred to the Circular bearing No.107/18/95-CX dated 2.3.95 pointing out from paragraph 5 thereof that no modvat credit under Rule 57G can be issued until goods have been received by a registered dealer; and he cannot receive goods without godown, the location and other details of which are entered in his application for Registration lodged with the Range Officer concerned.

He also submitted that "C.R. coils" and "C.R. sheets" were classified under different sub-headings. Therefore, the trade notice on which reliance was sought to be placed by the appellants was inapplicable to the facts of the present case.

8.1 The learned authorized representative for the department placed reliance on the decision of the Tribunal in CCE, New Delhi v. Avis Electronics Pvt. Ltd. that when a particular thing is directed to be performed in a manner prescribed by the Rules, it should be performed in that manner itself and not otherwise. He also relied upon the decision of the Hon'ble the Supreme Court in Mihir Textiles Ltd. v. CC, Bombay , for the proposition that exemption benefit dependent upon satisfaction of certain conditions cannot be granted unless such conditions are complied with.

9. The controversy arising in these two appeals is in a narrow compass.

There is no dispute over the fact that the appellant M/s Allied Steels was a registered dealer having its premises duly registered. However, since the said registered dealer did not have sufficient arrangement in his premises for receipt, storage etc. of the "C.R. Coils" it had unloaded the goods in the premises of RSD Steel cutters. Admittedly, the appellant -Standard Electricals Limited who purchased the goods from M/s Allied Steels, the registered dealer, had got the "C.R. coils" cut into "C.R. sheets". However, the invoices under which Standard Electricals Limited purchased the goods showed as if they were "C.R.Coils" removed from the premises of the registered dealer. There is absolutely no dispute about the fact that the same "C.R. coils" which were converted into "C.R. sheets" were the goods on which excise duty was paid, and that ordinarily modvat credit could be availed in respect of such inputs. The only lapse on which the Revenue

has acted was the incorrect description about the premises from which the goods were removed, in the invoice prepared by the registered dealer and their being described in their original form of "C.R. coils".

10. Under Rule 57G of the Central Excise Rules, 1944, procedure to be observed by the manufacturer is laid down and it is, inter-alia, provided by Sub-rule (3) thereof that, no credit under Sub-rule (2) shall be taken by the manufacturer unless the inputs are received in the factory under the cover of the documents enumerated therein including at Clause (e), being an invoice issued by a "first stage dealer" of excisable goods, registered under Rule 174. Rule 174, deals with registration of certain persons including dealers storing in private store-room or warehouse or otherwise, excisable goods. Separate registration certificate was required for separate premises under Sub-rule (3) of Rule 174. There is no dispute over the fact that M/s Allied Steels was a registered dealer and it had issued the invoice as a "first stage dealer" of the excisable goods and on the strength of such invoice, the appellant Standard Electricals Limited had claimed the modvat credit. There appears to be no statutory provision to the effect that modvat credit can be denied, if the goods are not first taken to the premises of the registered dealer and then brought to the factory of the manufacturer. The scheme of the Act and rules appears to be focusing on the movement of the goods for which purpose it regulates the place where they can be stocked, before delivery to the manufacturer who wants to avail of modvat credit thereon and appropriate records are required to be maintained. This is why, the premises have to be got registered by the registered dealer and the necessary inward and outward entries are required to be made, just as the relevant statutory records are to be maintained by the original manufacturer of such goods and their movement from the factory is required to be shown. However, keeping in view the inconvenience experienced by the trade, it appears that, by Trade Notice No. 10/95 dated 21.2.1995 issued by the Mumbai Commissionerate-I, provisions for transit sale were made. It was provided in the notice that where a registered person places an order on a manufacturer for supply and delivery of the goods directly to a consumer and the goods are accordingly transported from the manufacturer's premises to the user's premises without being brought to the registered person's premises, the manufacturer will issue an invoice under Rule 57A which will contain, in addition to

the prescribed details including the consignee's name and address, mentioned therein, the registered person's name and address, on whose instructions the goods have been dispatched. The consignee in such a case will be the end-user. In such a situation the registered person's invoice is not required for availment of modvat credit. Thus, even where there was a registered dealer, in cases of transit sale, the registered dealer's invoice was not required for availment of modvat credit under Rule 52A of the rules which include the consignee's name as well as the registered person's name. The goods on which duty was paid were "C.R. coils" and the very goods were admittedly got cut into sheets by the consignee i.e. the appellant - Standard Electricals Limited at the premises of RSD Steel cutters, where they were unloaded for the purpose. Since the goods were supplied as C.R. coils, the invoice mentioned them as "C.R. coils". Even cutting of the coils into sheets, not being manufacture did not make any difference. It may also be noticed that as per the CBEC circular No.96/7/95-CX dated 13.2.1995 if the whole consignment is dispatched to buyer from manufacturer of inputs, cenvat will be permissible, if the name of the final buyer is shown as the consignee who can avail cenvat credit on the basis of the duplicate copy of the manufacturer issued under Rule 11 (earlier Rule 52A). In such cases the goods need not be brought to the premises of the registered person (dealer). Invoice of registered person/dealer is not required for availing the cenvat credit by the consignee. The Pune Commissionerate had issued a letter trade notice No. 76/95 dated 20.7.95 stating that registered dealer should not issue cenvatable invoice for transit sale. Such invoices can be issued only when goods are physically received in the godown. The dealer can issue non- cenvatable invoice in case of transit sale. For this purpose, invoice book of different series such cenvatable invoice of dealer was required to be maintained.

11. From the trade notice No. 62/99 dated 16.10.99 which has been reproduced in paragraph 5 of the judgment of the Tribunal in N.V.Enterprises (P) Ltd. (supra), it appears that it was issued in the context of the earlier trade notice No. 10/95 dated 20.2.1995 after noticing difficulties that had arisen for the registered dealers of metal coils who sold them after decoiling the coils into sheets from the cutter's place under the cover of invoice issued under Rule 57G/57T. It was clarified by this trade notice that the registered dealer will maintain proper account of outgoing

goods (i.e. coils) and incoming goods (i.e. sheets) and transactions will take place under the cover of challans mentioning description of goods, quantity, value and relevant Bills of Entry No./ Invoice No., under which the metal coils have been purchased. Further, it will have to ensure that the cutting is done in such a way that it does not result in the change of the tariff classification of the resultant product. The Division Bench of this Tribunal in the said case found no merit in the contention of the Revenue that the goods in question were not brought to the registered premises of the dealer, in view of the said trade notice, and held that it covered the situation where modvat credit was claimed on the strength of invoices issued by the registered dealers though the goods were not brought in the registered premises and the registered dealer received "C.R. coils" while the manufacturer availed benefit of credit on "C.R. sheets". As noted above, the basic requirement of Rule 57G was, in the present context, that the manufacturer could take credit of the goods received by him in his factory under the cover of modvatable documents which included an invoice issued by the dealer of excisable goods registered under Rule 174. Admittedly, the invoice was issued by such registered dealer in the present case. The practical difficulties experienced in cases where "C.R. sheets" and "C.R. Coils" were supplied by the registered dealers were noticed and were acknowledged, and the trade notice dated 16.10.99 was issued to mitigate the difficulty particularly for registered dealers of metal coils who sold them after getting the coils cut into sheets from the cutter's place, and the registered dealers were required to mention the number of sheets alongwith the details of the original description as well as quality of goods on the body of the invoice issued under Rule 57G. In the present case also, the goods were unloaded at the cutter's place so that "C.R.coils" could be cut into "C.R. sheets". The goods were duly duty paid and on these very goods which were cut into "C.R. sheets", modvat credit was availed. Merely because the sheets were unloaded at cutter's place and got cut by the consignee, the goods did not cease to be modvatable under the invoice issued by the registered dealer. In the present case, there was no dispute about the identity of the goods [C.R. coils], on which duty was paid and which were cut into sheets on which the appellant Standard Electricals Limited claimed the modvat credit. It is, however made clear that the statutory requirement of governing the movement of the duty paid goods in the

context of availment of modvat credit when they are supplied by registered dealers cannot be undermined and the premises registered for storage of the goods have a great significance, by virtue of the requirement of inward and outward entries which are to be made in order to ensure that under the guise of duty paid invoices non-duty paid goods are not supplied.

If the non-duty paid goods are supplied, then obviously that would lead to evading duty, because, by the recipient claiming the modvat credit there will be loss of duty to the exchequer when the goods are not received under the modvatable invoice as contemplated by Rule 57G of the Rules. The benefit of the ratios of the decisions of this Tribunal in CCE, Jalandhar v. N.V. Enterprises (P) Ltd. (supra) rendered by Division Bench and in Sudarshan Steels (Supra) and in N.V. Enterprises Pvt. Ltd. v. CCE, Jalandhar (supra) cannot, however, be denied to the appellants.

12. In the above view of the matter, the impugned orders made in Excise Appeal No. 5172 and 5216 of 2004 are hereby set aside with consequential relief. The impugned order of the Commissioner (Appeals) made in Excise Appeal No. 5215 of 2004 is set aside only to the extent that it is made against the present appellant. All the three appeals are accordingly allowed.

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