

Alert Engineering Enterprises Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-18-2006

Reported in : (2006)(113)ECC561

Judge : R Abichandani

Appellant : Alert Engineering Enterprises

Respondent : Cce

Judgement :

1. These two appeals are filed by the same appellant raise common issues and therefore are heard and disposed of together. In both these appeals, the appellant has challenged the order made by the Commissioner (Appeals) on 23.8.2004, dismissing both the appeals and upholding the order-in-original dated 15.10.2003, by which refund claims of the appellant were rejected.

2. By show cause notice dated 20.8.2003, the appellant was called upon to show cause as to why the claim of refund of Rs. 39,050/- made on 02.04.2003, on the ground that the amount was paid by mistake of the clerk on the basis of supplementary invoice Nos. 54, 55 and 56, all dated 31.5.2002, should not be recovered.

3. By show cause notice dated 17.6.2003, the appellant was called upon to show cause as to why its claim for refund of Rs. 29,584/- made on 02.04.2003 on the ground that their clerk by mistake debited that amount on the basis of

supplementary invoice No. 57 dated 31.5.2002, should not be rejected.

4. As regards the claim relatable to supplementary invoice Nos. 54, 55 and 56, the adjudicating authority held that, there was no explanation for differential duty payment structure adopted on the same date, and that, duty liability had not been calculated twice and therefore, there was no question of any duty paid twice. It was held that the details incorporated in the invoices did not give any idea as to the method of calculation. Even in the other matter, the adjudicating authority adopted the same reason and further held, in respect of Invoice No. 57 dated 31.5.2003, that the claim of the appellant that their clerk paid more amount than payable on the goods cleared was not satisfactorily explained and that there was no factual basis for the claim. It was also held that under Section 12B of the Central Excise Act 1944, there was a statutory presumption regarding passing on of duty paid unless proved to the contrary, and that in these cases no document was available to prove that the party had not passed on the burden of duty.

It was held that since the receiver of the goods BHEL had taken credit of the amounts of the supplementary invoices and the burden was passed on, the appellant was not entitled to the refund of the said amount in respect of which BHEL had availed modvat credit.

5. In the common order made by the Commissioner (Appeals) against the two orders of the same adjudicating authority, it is held that there was no mechanism by which a supplementary invoice can be issued and duty paid only to facilitate the buyer to take modvat credit in respect of which was taken on the earlier invoices. Moreover, the credit having been taken on the supplementary invoices, question of refund of duty paid on the supplementary invoices did not arise and the fact that the buyer did not take credit in respect of goods initially cleared, did not entitle the appellants to claim refund because the duty was correctly paid at the time of clearances.

6. Since no one appeared for the appellant in these matters, the learned authorized representative for the department has referred to the entire record and the contentions raised by the appellant and submitted that the authorities below have rightly rejected the claim of the appellant because, modvat credit was availed

by the receiver of the goods BHEL in respect of the amounts covered under the supplementary invoices under which the appellant had passed on the burden of duty imposable at the rate of 9.6% on the value of the material which was received for job work by the appellant.

7. It appears from the record that the appellant had received tube casting from BHEL under invoices No. 7183 dated 23.7.2001, 7351 dated 6.11.2001 and 7470 dated 4.01.2001 for job work in respect of which the appellant had taken modvat credit to the tune of Rs. 5970/-, Rs. 29,584/- and Rs. 29,584/-, respectively, on the assessable value of such material received. It also transpires from the record, particularly the two earlier orders made on 25.2.2003 by the Assistant Commissioner, that on completion of the job work the appellant had cleared the goods under invoices No. 146 dated 19.10.2001, 199 dated 4.1.2001 and 235 dated 25.2.2002 and had debited the duty amounts at 9.6% on the progressive value of clearance (since the total value was below one crore) and at 16% on the assessable value of tube casting.

Realising that even in respect of the said raw material which was received by them for job work, they were required to debit the duty only at the rate of 9.6% and not at 16% as done by them, the appellant claimed the refund of the excess amount which was not passed on to the buyer. In fact, no duty element on the raw material was passed on to the buyer in the invoices under which the amount was debited initially at the rate of 16% and by virtue of their refund claims for the excess payment over the rate of 9.6%, the refunds of Rs. 14,201/- and 11,834/- came to be sanctioned by the two orders dated 25.2.2003 passed by the Assistant Commissioner in which it was categorically found that there was no unjust enrichment by the appellant since the duty was not passed on to BHEL. Thus, the said two orders became final.

8. It appears from the original invoice Nos. 146, 199 and 235 that the appellant had included in the invoices basic excise duty at 9.6% on the job work done by them and in these bills after showing excise duty of 16% on the tube casting supplied by BHEL it was deducted on the ground that excise duty was paid by BHEL, as a result of which, on the total invoice value only the basic excise duty at

9.6% on their job work was passed on to BHEL and no excise duty payable on the raw material supplied for job work was passed. However, admittedly, the entire duty amount payable on BED at 9.6% on the value addition due to job work as well as excise duty of 16% on the raw material which was supplied for job work, was debited by the appellant in respect of these invoices.

This fact is borne out from the orders dated 25.2.2003 in which it was clearly recorded that the Superintendent by letter dated 28.10.2002 had confirmed that the recipient BHEL had availed modvat credit of Rs. 1285/-, Rs. 6427/- and Rs. 6427/- in respect of invoice Nos. 146 dated 19.10.2001, 199 dated 4.1.2002 and 235 dated 25.2.2002. In these orders it was also found that the appellant was required to pay debit duty at 9.6% as their progressive value of clearance was well below one crore, but by mistake they had paid duty at 16%.

9. The above material on record shows that all the duty that was payable by the appellant was paid by them in respect of all the three invoices by debiting their modvat account and the excess debit was refunded to them by orders dated 25.2.2003. One more thing that transpires from the established facts is that duty in respect of raw material received from BHEL for job work which was debited at 16% (though payable at 9.6% and later in respect of which refunds came to be sanctioned by order dated 25.2.2003), was not passed on to BHEL under the said invoice Nos. 146, 199 and 235 which fact is apparent from those invoices because in each one of them the duty shown to be payable at 16% on the raw material received is deducted in the invoice itself and in the total invoice amount did not reflect. This is why it became necessary to issue supplementary invoices to pass on the duty burden at 9.6% on the raw material to BHEL which was not earlier passed on in the original invoices though deducted in the modvat account. The supplementary invoice Nos. 54, 56 and 57 issued on 31.3.2003 clearly show that they were drawn only with a view to recover the excess duty at the rate of 9.6% from BHEL, it was earlier charged under the original invoices. Since the duty was already paid up by the appellant and that aspect stood concluded by the order dated 25.2.2003 that there would no question arise that any further duty in respect of these supplementary invoices by which the appellant sought, to recover the amount of duty which he had already paid in respect of which no question of unjust

enrichment could ever arise. The appellant was entitled to recover the duty paid by him at the rate of 9.6% by it from BHEL, since it was not earlier included in the original invoices.

Supplementary invoices were required to be issued because under Section 12A, the appellant was entitled to recover the duty amount as "part of the price at which such goods are to be sold". Obviously, therefore, no fresh debit was required to be made in respect of the amounts sought to be recovered under the supplementary invoices from BHEL because, that duty was already paid by the appellant as is evident from the orders dated 25.2.2003 which have been overlooked by the authorities below. It is, therefore, clear that the debit in modvat credit account of Rs. 39,050/- and Rs. 29,584/-, which were not payable again since the amounts were already paid up earlier, was clearly a mistake on the part of the appellant. The impugned orders cannot, therefore, be sustained and are hereby set aside by allowing the refund claims of the appellant in both these matters of Rs. 39,050/- and Rs. 29,584/- . Both the appeals are accordingly allowed.

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