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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-08-2006

Reported in : (2007)(114)ECC317

Judge : M Ravindran

Appellant : Hind Lamps Ltd.

Respondent : Cce

Judgement :

1. This appeal is directed against order in appeal dated 27/07/04 which upheld the order in original denying the modvat credit to the appellant and also imposed penalty.

2. The relevant fact that arise for consideration are appellants were manufacturers of Electric Lighting Bulbs and Fluorescent tubes. The said finished products of the appellant were exempted from payment of duty and were brought into the duty net from 01/03/97. The appellant filed claim for modvat credit of the inputs in stock as on 01/03/97 and also for the inputs received between 01/03/97 to 16/03/97. The appellants filed requisite declaration of the inputs under Rule 57G to the authorities on 17/03/97. Appellant availed the modvat credit on 28/03/97. Show cause notice was issued to the appellant for denying the modvat credit and also for imposition of the penalty having violated the provisions of the Central Excise Rules, in respect of availment of the credit. The appellants contested the show cause notice on the ground that they had availed the modvat credit based on the

provisions of Rule 57H of the Central Excise Rules, 1944. The adjudicating authority did not accept the contentions and confirmed the demand and also imposed penalty. On an appeal, Commissioner (Appeals) concurred with the findings of the adjudicating authority and upheld the order in original. Learned advocate for the appellants submits that the appellants had filed the modvat declaration regarding the inputs to be used by them on 17/03/97 and on the very same day filed an application for permission to grant credit under Rule 57H of the Central Excise Rules, 1944. It is his submission that the modvat credit sought to be availed by the letter dated 17/03/97 was scaled down to Rs. 1.53 lakhs by letter dated 19/03/97. It is his submission that provisions of Rule 57H (1B) and 57H (4) would cover the case of the appellant. He also relies upon the order and judgment of the Hon'ble High Court of Madhya Pradesh, Indore Bench in the case of Gilt Pack Ltd. v. Assistant Collector of Central Excise, Indore as reported at 1994 (69) E.L.T. 222 (M.P.). It is his submission that this judgment and order of the Hon'ble High Court is squarely on the point in respect of the provisions of Rule 57H of Central Excise Rules, 1944. He also submitted that the very same order and the judgment of the Madhya Pradesh, High Court was taken up by the revenue in a Special Leave Petition to the Hon'ble Supreme Court which dismissed the same as reported at U.O.I. v. Assistant Collector 1999 (114) E.L.T. A226 (S.C.).

3. The learned SDR submits that the provisions of Rule 57H were in fact are exception for availment of modvat credit in respect of those assesseees who could not file the declaration as required under Rule 57G of the Central Excise Rules, 1944. It is his submission that the appellants had in fact filed a condonation of delay for the filing of declaration belatedly and hence their case is not covered under Rule 57H (1B). He submits that the issue is squarely covered by the decision of the Hon'ble tribunal in the case of the Dy. Director, Store Procurement Deptt. v. CCE, Chandigarh as reported at 2000 (123) E.L.T.1169 (Tribunal).

4. Considered the submissions made by both sides and perused records. I find from the records that the modvat credit to the appellant has been denied on the inputs lying in stock as on 01/03/97 and also on the inputs received between 01/03/97 to 16/03/97. It is undisputed that the appellants filed the declaration for the use of inputs in their final products, as required under Rule 57G on 17/03/97

and at the same time also filed declaration under Rule 57H on the same day. It is seen from the record that the appellants had in fact given details of the stock of inputs as on 01/03/97 vide their declaration dated 17/03/97 under Rule 57H. In order to appreciate, the correct position of law it is required to read the provisions of Rule 57H (1B) and 57H (4). I may read: (1B) Notwithstanding anything contained in Rule 57G, every manufacturer who intends to avail of credit of duty paid on inputs received by a manufacturer immediately before obtaining the dated acknowledgement of the declaration made under said rule, shall file a declaration under this sub-rule with the [Assistant Commissioner of Central Excise] having jurisdiction over his factory stating that - (a) such inputs are lying in stock, or are received in the factory after filing the declaration made under Rule 57G, or (b) such inputs are used in the manufacture of final products which are cleared from the factory after filing the declaration made under Rule 57G, and that no credit has been taken by the manufacturer in respect of such inputs under any other rule or notification: Provided that such inputs are not used in the manufacture of final product which is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty.

(4) A manufacturer who has filed a declaration under Sub-rule [(1B)] or Sub-rule (3) may, after obtaining the dated acknowledgement of aforesaid, take credit of the duty paid on the inputs received by him: Provided that no credit shall be taken unless the inputs were received in the factory under the cover of a Gate Pass, an A.R.I., a Bill of Entry or any other document as may be prescribed by the Central Board of Excise and Customs [constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] in this behalf evidencing the payment of duty on such inputs and such evidence is made available by the assessee to the department.] 5. It can be noticed from the above reproduced rules that if they are read together it would indicate that, if an assessee has filed a modvat declaration under Rule 57G and any inputs received prior to such declaration, the credit of the duty paid on such inputs would be available to the assessee. In the present case before me the appellant had filed modvat declaration under Rule 57G on 17/03/97 and on the very same day had filed the declaration under Rule 57H. If that be so, the inputs in stock as on 01/03/97 and received between 01/3/97 to 16/03/97, the appellant is eligible to avail modvat credit of the duty paid on such inputs. It is on record that

the appellant had availed the modvat credit on such inputs in statutory records on 28/03/97. To my mind, the appellant is permitted to do so by virtue of the provisions of Rule 57H (4) as reproduced above.

6. It is undisputed by the revenue that the appellant had received these goods and consumed by them in the manufacture of their final products. The Hon'ble High Court of Madhya Pradesh in the case of Gilt Pack Ltd. (Supra) in respect of the provisions of Rule 57H in its earlier version has held as under: 6. As regards the merits, let us first look at the provisions contained in the transitional provision contained in Rule 57H. Undisputedly this provision has been introduced by the law makers to give benefit to those who could not understand the new phenomena of the MODVAT credit and those debarred from filing the declarations as required by the Rules allowing the MODVAT credit. The purpose apparently appears to be to give the credit to the manufacturers for those raw materials on which they have already paid the duty used as inputs for the manufacture of the goods which are liable to the duty as a final product. Rule 57H has two limbs, one pertains to such inputs as are lying in stock or are received in the factory after filing the declaration made under Rule 57G and the second limb of the Rule pertains to those inputs which are used in the manufacture of final product and which are cleared from the factory on or after 1st March, 1987 provided that no credit has been taken by the manufacturer in respect of such inputs under any other Rule or Notification or that the final products of such inputs are dutiable.

A bare reading of the aforesaid two provisions shows that a manufacturer is entitled to get credit on the inputs which are lying in stock or are received in the factory after filing the declaration and also on such inputs which are already used in the manufacture of the final products and those final products are cleared from the factory on or after 1st March, 1987. As such when an argument is advanced that the inputs are not available for verification as they are not lying in stock, acceptance of such an argument would result in making the provision of second clause of Rule 57H nugatory. It appears that the purpose behind the Rule was to give credit both to the inputs which were lying in stock for verification and also those inputs which were already used in the manufacture of the goods which were cleared from the factory on or after 1st day of March, 1987.

The clear language of the Rule does not admit of any other interpretation than the one which gives benefit in both the cases.

10. In the instant case the manufacturers have submitted the details of the inputs used by them for the manufacture of the goods which were cleared by the Central Excise Authorities on 1-3-1987 and thereafter, till filing of the declaration. As there is no time limit for filing the declaration and there being no definition of the words "immediately before filing the declaration" it should be held that if the declaration is filed by the manufacturers claiming the credit, that declaration has to be considered in the light of the record available with the Central Excise Authorities. It is not the case of the Central Excise authorities that the details of the inputs which are already used for manufacturing the goods cleared by the Authorities on 1-3-1987 and after are not available with them.

They have actually been filed by the petitioners along with the applications as is manifest from the petition and that fact has not been denied or disputed by the authorities. Therefore, on the basis of those details the credit should always be given to the manufacturers after verification of the inputs used for the manufacture of the goods cleared on 1-3-1987 and thereafter. But it seems that the authorities concerned have not cared to look into this aspect of the matter. The credit has been allowed only on those goods which were lying, in stock as per the first clause of Rule 57H of the MODVAT Rules. The authority has not cared to look into the provisions of Sub-clause (ii) of Rule 57H of the Rules which clearly provides for allowing the credit for the inputs which have been consumed for manufacture of goods cleared on 1-3-1987 and thereafter.

7. It can be noticed that their lordship, while interpreting the Rules 57H (in its earlier version) clearly laid down the ratio that there is no time limit for filing the declaration and there being no definition of the words "immediately filing before the declaration", the credit should be considered in light of the records available with the Central Excise Authorities. In this case before me, the appellants had given detailed chart indicating the stocks lying with them as on 01/03/97 and the receipt of the goods during the period 01/03/97 to 16/03/97 and is not disputed by the lower authorities anywhere in their orders.

8. Further, it is the contention of the DR that the appellants have filed the declaration and had also filed an application for condonation of delay under the provisions of Rule 57G(5). The Division Bench of the Tribunal in the case of J.B.M. Tools Ltd. v. CCE, Pune as reported at had held that non-filing of the declaration is in itself would not be a hurdle for availment of the modvat credit, subsequent to the amendment to the Rule 57G on 07/09/99. The relevant portion of the Division Bench judgment is as under: 4. 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.

9. Accordingly, since there is no dispute regarding the receipt and the consumption of the inputs, the composite reading of Rule 57H (1B)/57H (4) and the ratio as laid down by the Hon'ble High Court of Madhya Pradesh and upheld by the Hon'ble Supreme Court and the Division Bench of the Tribunal, I find that the impugned order is unsustainable.

10. Respectfully following the judgment of the Hon'ble High Court of Madhya Pradesh and Hon'ble Supreme Court and Division Bench of the Tribunal, I set aside the impugned order and allow the appeal of the appellant with consequential relief, if any.

(Operative part pronounced in open court on 08/11/2006 after conclusion of arguments)

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