

Mrp Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Nov-17-2006

Judge : S Peeran, P Chacko, J T T.K.

Appellant : Mrp Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Pursuant to Misc. Order No. 457/2006, dated 5-6-2006 (Referral Order) passed by the South Zonal Bench, Bangalore, we have been called upon to decide on the following issue: Whether Bill of Entry is a document "issued" for the purpose of applying the provisions of Rule 57G(5) and thus covered by Rule 57G(5) of the Central Excise Rules? 2. The brief facts of the case, for our purpose, are that the appellants, manufacturers of petroleum products, had taken, during the month of September 1999, Modvat credit, in RG 23 A Part II, of countervailing duty (CVD) paid on various inputs imported during April to December 1998; that, by a show-cause notice dated 27-3-2000 as amended by corrigendum dated 3-4-2000, the jurisdictional Superintendent of Central Excise proposed to disallow the above credit on the ground that the credit had been availed after six months from the date of "issue" of Bill of Entry held to be the same as the date of payment of CVD; that the appellants contested the proposal by submitting that the delay in taking the above credit was on account of the delay on the part of Customs authorities in assessing and releasing the documents and also by relying on a decision of the Tribunal; and that, in adjudication of the dispute, the jurisdictional Commissioner

vide Order-in-Original No. 10/2004, dated 31-8-2004 upheld the above proposal of the department and disallowed the entire Modvat credit of CVD on the ground of limitation in view of Sub-rule (5) of Rule 57G of the Central Excise Rules, 1944.

3. At the final hearing stage of the appeal filed by the party against the above order of the Commissioner, the regular Bench, after hearing both sides, noted conflicting views of different Benches of the Tribunal on the question whether the time-bar provision contained in Sub-rule (5) of Rule 57G of the Central Excise Rules, 1944 was applicable to availment of Modvat credit of CVD paid on imported inputs, based on the appropriate copy of Bill of Entry prescribed under Sub-rule (3) of the said Rule. It was noted that, in the case of *Bullocks Paint Equipment Pvt. Ltd. v. CCE, Mumbai-VI 2001 (138) E.L.T.1098 (Tri.-Mum.)*, a learned Single Member had held that as the expression "issue" used in Rule 57G(5) - reading thus : "Credit shall also not be taken by the manufacturer after six months of the date of issue of any document specified in Sub-rule (3)..." - did not qualify the prescribed document viz. Bill of Entry and, as the date of filing of Bill of Entry had no relevance to the physical movement of the goods covered thereunder, the limitation prescribed under Sub-rule (5) of Rule 57G was not applicable to Modvat credit on imported inputs. The above view was followed by a Division Bench of the Tribunal in the case of *Texmaco Ltd. v. CCE, Kolkata-III 2004 (175) E.L.T. 553 (Tri.-Kol)*. A subsequent Single Member decision in the case of *Atul Ltd. v. CCE, Surat 2004 (175) E.L.T. 250 (Tri.Mum.)* was also noted by the referral Bench and the same was also to the effect that a Bill of Entry was not a document "issued" by any authority and therefore the limitation of six months prescribed under Rule 57G(5) was not applicable in respect of Modvat credit taken on the basis of such document. The referral Bench itself was in agreement with the view taken in *Bullocks Paint Equipment* case (*supra*). However, in keeping with judicial discipline, it chose to refer the issue to Larger Bench after noting contra decisions of coordinate Benches. In *Duracell (India) Pvt. Ltd. v. CCE, New Delhi-III*, one of such decisions noted by the referral Bench, a Division Bench at New Delhi did not agree with the view taken in *Bullocks Paint Equipment* case and, after consulting *New Oxford Dictionary of English* and *Justice T.P. Mukherjee's Law Lexicon* for the meaning of the word 'issue' as verb, held that it was not correct to say that a Bill of Entry which was a specific duty-paying document prescribed under Sub-rule

(3) of Rule 57G was not "issued".

The Northern Bench also relied on the Larger Bench decision in *Kusum Ingots and Alloys Ltd. v. CCE, Indore*, to hold that the time-bar provision of Sub-rule (5) of Rule 57G was applicable to Modvat credit of duty paid on inputs as evidenced by any of the documents [including Bill of Entry] specified under Sub-rule (3) of Rule 57G. The decision in *Duracell* case was relied on in the case of *Ashok Leyland Ltd. v. CCE, Chennai*, another case noted by the referral Bench. The above Larger Bench decision of the Tribunal and the apex Court's decision in *Osram Surya (P) Ltd. v. CCE, Indore* were also relied on in *Ashok Leyland* case for holding that, after 29-6-1995 (the date on which the time-bar provision was first inserted in Rule 57G), it was not open to a manufacturer of final product to take Modvat credit on imported inputs beyond six months from the date of the prescribed document viz. relevant copy of Bill of Entry.

4. Heard both sides. Learned advocate who represented the appellants sought to rule out the applicability of Sub-rule (5) of Rule 57G to Modvat credit of CVD paid on imported inputs cleared for home consumption under a Bill of Entry by relying mainly on the decision in *Bullows Paint Equipment* case. On the other hand, the departmental representative argued in support of the view taken by the Tribunal in *Duracell* case. According to learned advocate, the apex Court's judgment in the case of *Osram Surya (P) Ltd. (supra)* or the Tribunal's Larger Bench decision in the case of *Kusum Ingots and Alloys Ltd. (supra)* was not of any aid to the Revenue's case inasmuch as the question whether the limitation prescribed under Rule 57G(5) was applicable to availment of input duty credit on the basis of any copy of Bill of Entry had not arisen for consideration in those cases. This argument was opposed by learned DR, who also claimed support from the provisions of Sections 46 & 47 of the Customs Act, to the Revenue's case that a copy of Bill of Entry for home consumption was "issued" to the importer after assessment of the goods to duty.

5. After examining the various provisions of law cited before us, we find that Sections 46 and 47 of the Customs Act and the procedure thereunder which would have clinched the issue were lost sight of by the Benches which held that a Bill of

Entry for home consumption was never "issued". An importer of any goods other than goods intended for transit or transshipment is required to present to the proper officer of Customs a Bill of Entry for home consumption or warehousing in the prescribed form. Such a Bill of Entry may be presented at any time after the delivery of the import manifest or import report, as the case may be. The jurisdictional Commissioner of Customs can, in special circumstances, permit the Bill of Entry to be presented before delivery of the import manifest/import report. In respect of the goods shipped for importation into India, the vessel/aircraft is expected to arrive within 30 days from the date of such advance presentation of Bill of Entry. These are the relevant provisions of Section 46 of the Customs Act. As we are concerned with Modvat credit of CVD paid on imported inputs cleared for home consumption, we are not concerned with any Bill of Entry for warehousing and shall proceed to examine the further procedure in relation to a Bill of Entry for home consumption. It is not in dispute that, in the manual system, i.e., before the present EDI system was introduced (1995), a Bill of Entry was required to be filed in quadruplicate by or on behalf of the importer and that the proper officer of Customs would, after assessment of duty on the goods (vide Sections 17 and 18 of the Act) covered by the document, make an order (known as ("out-of-charge order" in departmental parlance) under Sub-section (1) of Section 47 of the Customs Act permitting clearance of the goods for home consumption if he was satisfied that the goods entered under Section 46 for home consumption were not prohibited goods and that the importer had paid the duty assessed thereon and any charges payable under the Act in respect of the goods. The procedure in detail can be had from the Customs Manual - a compilation of instructions of CBEC/Ministry of Finance, followed in all Customs Houses. For our purpose, we need only mention that, ultimately, the importer would receive the triplicate copy of the Bill of Entry along with the out-of-charge order and would retain the same. This copy of the Bill of Entry carries the dates of filing, assessment, payment of duty, examination (second check) and out-of-charge order. It is, also, not in dispute that, upon assessment of duty by the proper officer, the triplicate copy of Bill of Entry was required, under Section 47(1), to be returned to the assessee (importer) for payment of duty and other charges if any and, accordingly, the assessee should make the payments, whereupon the proper

officer would pass the 'out-of-charge' order under Section 47(1). The triplicate copy of Bill of Entry (assessed) containing endorsement of payment of duty would be retained along with out-of-charge order by the importer taking delivery of the goods for home consumption. The return of assessed Bill of Entry under Sub-section (1) for payment of duty is clearly indicated by the text of Sub-section (2), which reads: (2) Where the importer fails to pay the import duty under Sub-section (1) within seven days excluding holidays from the date on which the bill of entry is returned to him for payment of duty....

Where a Bill of Entry was generated on EDI system, the duplicate and triplicate print-outs of the document would, upon assessment and payment of duty, be returned to the importer vide procedure laid down under the Bill of Entry (Electronic Declaration) Regulations, 1995 issued by the Board under Section 157 of the Customs Act. In the previous system, it was only the triplicate copy of Bill of Entry that was returned at the same stage. We find that these documents viz.

triplicate copy of bill of entry during the pre-EDI era and duplicate copy of bill of entry in the EDI system were prescribed under Sub-rule (3) of Rule 57G for the purpose of availment of credit of CVD paid on imported goods cleared for home consumption. This sub-rule is reproduced below: (3) No credit under Sub-rule (2) shall be taken by the manufacturer unless the inputs are received in the factory under the cover of any of the following documents, namely: (a) an invoice issued by a manufacturer of inputs under Rule 52A or 100E of the said rules; (b) an invoice issued by the manufacturer of inputs from his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold, by or on behalf of the said manufacturer provided the depot or the premises, as the case may be, is registered under Rule 174; (d) a certificate issued by an Appraiser or Customs posted in foreign post office; (e) an invoice issued by a first stage dealer of excisable goods, registered under Rule 174; (f) an invoice issued by a second stage dealer of excisable goods registered under Rule 174 and duly authenticated by the proper officer; (g) an invoice issued by a dealer on or before the 31st day of August 1996; (h) an invoice issued by an importer registered under Rule 174 and duly authenticated by the proper officer; (i) an invoice issued by an importer from his depot or from the premises of the

consignment agent of the said importer provided the said depot or the premises, as the case may be, is registered under Rule 174, and duly authenticated by the proper officer; (j) an invoice issued by a first stage or second stage dealer of imported goods registered under Rule 174 and duly authenticated by the proper officer; (k) duplicate copy of a bill of entry generated on Electronic Data Interchange System installed in any Customs or Central Excise Commissionerate; (l) a certificate issued by the Superintendent of Central Excise or by the proper officer in the Customs area under Rule 57E; and (m) an invoice issued by a manufacturer of final products under Sub-rule (3) of Rule 57F or Sub-rule (1) of Rule 57S. Learned Counsel for the appellants has dwelt much on the absence of the word "issued" in the company of 'triplicate copy of a Bill of Entry' and 'duplicate copy of a Bill of Entry generated on EDI System' respectively in Clauses (c) and (k). He has argued that, for the applicability of Sub-rule (5) of Rule 57G to availment of Modvat credit on the basis of any of the documents specified under Sub-rule (3), the prescribed document must be one which was "issued" by the appropriate authority. In this connection, learned Counsel has harped on the word "issue" used in Sub-rule (5) of the Rule. We have already extracted the time-bar provision from Sub-rule (5) in this order. However, we shall reproduce it as required by the context: (5) Credit shall also not be taken by the manufacturer after six months of the date of issue of any document specified in Sub-rule (3)....

It has been argued by learned Counsel that, since triplicate copy of a Bill of Entry [Clause (c) of Sub-rule (3)] or duplicate copy of a Bill of Entry [Clause (k) of Sub-rule (3)] was not a document "issued" by any authority, the limitation prescribed under Sub-rule (5) was not applicable to availment of credit of CVD on imported goods covered under any Bill of Entry. We must reject this argument in view of the provisions of Sections 46 and 47.

6. 'Bill of Entry' as defined under Section 2(4) of the Customs Act means a 'bill of entry' referred to in Section 46 of the Act. Section 46 provides for presentation of a bill of entry to the proper officer of customs by the importer for home consumption of the goods imported by the latter. Section 47 of the Act governs further procedure in relation to the document upto clearance of the goods for home consumption. This procedure includes return of Bill of Entry by the proper officer to

the importer for the purpose of payment of the duty assessed. After such payment of duty followed by return of the bill of entry, the document is retained by the assessee and the same is the duty-paying document specified under Clause (c) of Sub-rule (3) of Rule 57G or Clause (k) of the sub-rule, as the case may be. [Contextually, it may be noted that there is no separate definition of "bill of entry" under the Central Excise Act or any Rules framed thereunder and, therefore, any reference to this document under the said Act or Rules is a reference to the document as defined under Section 2(4) of the Customs Act]. These provisions have got to be interpreted in a manner consistent with the provisions of Sections 46 and 47 of the Customs Act. We have already examined the provisions of Section 47 earlier in this order and the same provides for return of assessed bill of entry by the proper officer of customs to the importer to be used and retained by the latter. In a harmonious construction of the provisions, the word 'issue' used in the time-bar provision viz. Sub-rule 5 of Rule 57G has to be understood as meaning 'return' used in Section 47(2) of the Customs Act. Therefore, in our view, it is not correct to say that a triplicate copy of Bill of Entry mentioned in Clause (c) of Sub-rule (3) of Rule 57G or a duplicate copy of Bill of Entry mentioned in Clause (k) of the said sub-rule was not a document "issued" by any authority. Either of these documents should be held to be a document issued by the proper officer of Customs to the importer. Therefore, Sub-rule (5) of Rule 57G providing for a period of six months from the date of issue of any document specified in Sub-rule (3) for the purpose of availment of input duty credit must be held applicable to credit of CVD paid on imported goods cleared for home consumption, which payment is evidenced by triplicate copy of Bill of Entry or duplicate copy of Bill of Entry, as the case may be. Nobody has a case that "any document specified in Sub-rule (3)" would not include the copies of Bill of Entry specified under Clauses (c) and (k) of the said sub-rule, nor can anybody be heard to argue to the contra, for, such argument would be illogical and imprudent inasmuch as the rule-making authority cannot be expected to have deliberately avoided prescribing time-limit for availment of Modvat credit by a manufacturer of final product in respect of input received in his factory under cover of a particular document (Bill of Entry), while prescribing time-limit in respect of inputs received in the factory under cover of any other document. On the other hand, it is reasonably presumable that the rule-

making authority has made the delegated legislation so as to subserve the parent statute made by Parliament. Therefore, in our view, any interpretation of Sub-rule (5) of Rule 57G and Clauses (c) and (k) of Sub-rule (3) of the said Rule, different from what we have given, has to be rejected as it would get no support from the statutory provisions viz. Sections 46 and 47 *ibid*.

7. In this context, we think, we are supported by the ruling of the apex Court in the case of *Ispat Industries Ltd. v. CC, Mumbai* 2006-TIOL-127-SC-CUS., wherein their Lordships, following the Gunapradhan axiom of the Mimansa Principles of Interpretation, held that Rule 9(2) of the Customs (Valuation) Rules, 1988 was subservient to Section 14 of the Customs Act. Their lordships interpreted the rule in such a way as to make it in accordance with the object enshrined in Section 14 of the Customs Act. They held : "If there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule *ultra vires* the Act". Let us also see how their lordships applied the Gunapradhan principle to the case before them: In our opinion, the Gunapmdhnn principle is fully applicable to the interpretation of Rule 9(2). Rule 9(2) is subservient to Section 14.

We must, therefore, interpret it in such a way as to make it in accordance with the main object that is contained in Section 14 of the Customs Act. It may be that in isolation Rule 9(2) conveys some other meaning, but when it is read along with Section 14 of the Act, it must be given a meaning which is in accordance with the object of Section 14. The object of Section 14 is 'primary' whereas the conditions in Rule 9(2) are the 'accessories'. The 'accessory' must, therefore, serve the 'primary'." In the present case, we have construed the limitation provision of Sub-rule (5) of Rule 57G, in relation to Clauses (c) and (k) of Sub-rule (3) of the Rule, in a manner consistent with the overriding provisions of Section 47 of the Customs Act and accordingly we have held that a triplicate copy of Bill of Entry specified in Clause (c) of Sub-rule (3) of Rule 57G and a duplicate copy of Bill of Entry specified in Clause (k) of the said rule are documents "issued" to the importer of input by the proper officer of Customs in terms of Section 47 of the Customs Act and the relevant subordinate legislations under the Act.

8. In the above view of the matter, we overrule the view taken by the learned single Members in the cases of Bullovs Paint Equipment Put.

Ltd. (supra) and Atul Ltd. (supra) and by the Division Bench in the case of M/s. Texmaco Ltd. (Supra) and hold that the correct view was taken by the Northern Bench in the case of M/s. Duracell (India) Pvt.

Ltd. (supra). We also observe that the view taken in Duracell case was correctly followed by the Chennai Bench in the case of Ashok Leyland Ltd. (supra). The question referred to us stands answered in the affirmative. The case which involves other issues not covered by the reference is sent back to the regular Bench for disposal of the appeal in terms of this order.

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