Central Cables Ltd. Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-29-2007

Reported in : (2007)(121)ECC101

Judge : M Ravindran

Appellant : Central Cables Ltd.

Respondent : The Commissioner of Central

Judgement :

1. This appeal is directed against the order-in-appeal No.SVS/443/NGP-1/2005 dated 29/11/2005, which denied modvat credit to the appellants.

2. The issue involved in this case is regarding the denial of modvat credit of Rs. 1,64,179.03 to the appellants on the ground that the appellant had not declared the inputs before availing the modvat credit. The second issue involved in this case is regarding denial of modvat credit of Rs. 22,735.48 on the ground that there are no duty paying documents available for availing such credit.

3. Ld. Commissioner (Appeals) has decided the matter against the appellants on the following finding: In this case other charge is of the inputs not declared and the credit denied is Rs. 1, 64,179.03. The Circular No. 441/7/99-CX dated 23/02/99 and the Hon'ble Tribunal's decision in the case of Kamakhya Steels (P) Ltd., v. CCE, Meerut are relevant. The circular refers to the Notification No. 7/99-CE (NT) dated 09/07/99 which amends Modvat Rules so as to empower the Assistant

Commissioner of Central Excise having jurisdiction over the factory of manufacture to alow credit on duty paid inputs ignoring minor procedural lapses in filing the declaration or any invoice/documents based on which the credit is to be taken. However, it is to be ensured that the inputs have suffered the duty and are being used/are to be used in the process of manufacture. The para 2 of the above said circular speaks about the satisfaction of the jurisdictional Assistant Commissioner by way of enquiry with regards to duty paid nature and its uses. It further says that if the assessee has filed a declaration, the jurisdictional Assistant Commissioner shall allow the credit of duty after making enquiry. In the present case the charges are that the appellant even have not filed the declaration prior to taking the credit. The Assistant Commissioner in absence of the details is handicapped to make the enquiries with regards to duty payment of the goods from the supplier end. Hence I hold that the credit is not admissible to the appellant.

The credit of Rs. 22,735.48 taken without duty paid documents is not at all permissible under Modvat Rule. Such credit has also correctly been denied.

4. The Ld. Advocate appearing on behalf of the appellant submits that as regards the availment of modvat credit of Rs. 22,735.48, it is conceded that the appellant do not have the duty paying documents, hence they are not contesting the issue. As regards the availment of modvat credit of Rs. 1,64,179.03, it is his submission that the inputs were declared, but there was some mis-match of the description as declared to the description on duty paying documents. It is his submission that the issue covered by the decision of the Larger Bench in the case of Kamakhya Steels (P) Ltd., and also in the case of JBM Tools Ltd. v. CCE, Pune as reported in 2004 (144) ELT 561.

5. The Ld. SDR on the other hand contends that the procedures, which are required to be followed for availing modvat credit has to be followed by the appellants. It is his submission that if the inputs are not declared, the credit will not be allowed. It is also his submission that the Assistant Commissioner in the absence of any details, is handicapped to come to conclusion as regards duty paid at the suppliers end.

6. Considered the submissions made by both sides and perused the records.

7. As regards the availment of modvat credit of Rs. 22,735.48, the appellants are not able to produce any duty paying documents even today before me. Hence, the confirmation of amount of Rs. 22,735.48 is upheld and the order-in-appeal to that extent does not require any interference.

8. As regards the availment of modvat credit of Rs. 1,64.179.03 on the grounds that no declaration has been filed of the inputs, I find that the Division Bench of the 'tribunal in the case of JBM fools Ltd., had interpreted the provisions of Rule 57G (B) and 57T as amended by the Notification No. 7/99. The relevant paragraph is reproduced below: The amended rule which came into force from 9.2.99 was in existence when the declarations of JBM 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) doer not "offer any protection in case 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 57 G 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 case 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. It can be seen from the above reproduced portion of the order that on interpretation of Rule 57G, even if no declaration is filed as regards inputs by the assessee, there cannot be denial of modvat credit, if the assessee is able to show

that the said inputs were received and used in the factory premises. In the current case, it is undisputed that the appellants had received the goods and consumed the same in their factory. In the absence of any denial findings as to non-receipt of inputs and the consumption thereof, the ratio of the decision of the Division Bench in the case of JBM Tools Ltd., squarely covers the issue in favour of the appellants.

10. Accordingly, the impugned order to the extent it upholds confirmation of demand of duty amount of Rs. 22,735.48 is upheld and the order to the extent to which denied modvat credit of Rs. 1,64,179.03 is set aside. Appeal allowed partly.