

Cce Vs. Gupta Brothers Conduit Pipe

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-2008

Reported in : (2008)(226)ELT124TriDel

Judge : J T T.K.

Appellant : Cce

Respondent : Gupta Brothers Conduit Pipe

Judgement :

1. Revenue has filed these appeals against order-in-appeal No.95-96/CE/JAL/06 DT.28.2.06 passed by the Commissioner (Appeals), Chandigarh.
2. The main ground of the revenue for appealing against the impugned order is that there is no evidence of payment of duty on the goods supplied by Prince Agro & Allied Inds. and Gupta Brothers Conduit Pipe Manufacturing Co. (P) Ltd. Once there is no evidence for payment of duty, the cenvat credit cannot be taken even though it is deemed Cenvat credit.
3. Learned Authorised Representative argued that the conditions stipulated in the relevant notification No. 58/97 dt.30.8.97 have not been fulfilled for availing the deemed Cenvat credit. He stated that the recipient should have ensured that the appropriate duty was paid by the manufacturer.
4. Ld. Advocate who appeared on behalf of the respondent No. 2 namely Prince Agro & Allied Inds. states that it is not correct that respondent No. 2 did not

discharge any duty liability. Under the scheme of compounded levy, the annual capacity production is fixed by the Commissioner (Appeals). Moreover, the duty is discharged on fortnightly basis. Therefore, situation arise when the goods are cleared and duty would be paid after a lapse of few days in view of the system of fortnightly payment. In all these cases the clearance is done only in terms of Rule 96ZP3 and once there is an endorsement in the invoice that the goods are cleared under Rule 96ZP that would be sufficient for the purpose of taking Cenvat credit. On the other hand Ld. DR stated that the sample endorsement showing goods are cleared under Rule 96ZP is not at all sufficient because there is no declaration by the manufacturer to the effect that appropriate duty had been discharged.

In the absence of evidence he said Modvat credit cannot be taken and both the supplier and respondent are liable for penalty 5. Ld. Advocate for the respondent took me through both the order-in-original and also the order-in-appeal. The Commissioner (Appeals) has relied on the decision of the Tribunal in the case of L.D. Steel Corpn. v. CCE, Chandigarh reported in 2005 (69) RLT. 220 wherein it is observed that the declaration that goods were cleared under Rule 96ZP(3) is sufficient for taking deemed credit. He also relied on the decision of the Hon'ble High Court of Punjab & Haryana in the case of Vikas Pipes v. CCE, Chandigarh wherein it was held that where the invoice contained the declaration by manufacturer of inputs that inputs have suffered excise duty and on verification it was found that the supplier had not discharged the duty liability fixed under Section 3A, deemed credit cannot be denied as there is no requirement in the notification for production of evidence of payment of duty.

6. On a careful consideration of the issue, I find that in matters of availing deemed credit strictly speaking duty paying document is not insisted upon. Only for that reason, the nomenclature "deemed credit" has been used. If there is evident that goods had been cleared under the relevant Rule 96ZP, it should be deemed that the material received has been duty paid and credit should be allowed on the basis of the notification. If investigation revealed that goods have been supplied without payment of duty, it is for the revenue to go after the supplier and recover the duty. For this reason, respondent should not suffer.

7. In my view, it is precisely for this reason that the Hon'ble Punjab & Haryana High Court has ruled that where on verification, it is found that duty has not been paid by the supplier, deemed credit could not be denied. My attention was also invited by the Ld. Advocate that there was some dispute regarding the fixation of ACP. These proceedings are still pending before the Tribunal. In these circumstances, imposition of penalties is also not warranted. In respect of Invoice No. 287 even though the Commissioner has held that the credit taken is irregular because the invoice contained the declaration "duty liability to be discharged" under Rule 96ZP(3), the same has not been considered as sufficient declaration. However, on ground of time bar holding that there is no ground for invocation of the longer period, he has allowed the appeal of respondent No. 1 (Gupta Brothers). He has recorded that the respondent had placed on record photo copies of the letters submitted to the Supdt. of Central Excise, Gurdaspur. I find that the decision of the Commissioner (Appeals) in respect of particular invoice is legal and proper. I do not find any ground to interfere with the same.

8. In view of the above, I do not find any merit in the revenue's appeals, the same are dismissed.

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