Singh Engineering Works Vs. Collector of C. Ex.

Singh Engineering Works Vs. Collector of C. Ex.

SooperKanoon Citation : sooperkanoon.com/5261

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-23-1989

Reported in : (1990)LC517Tri(Delhi)

Appellant : Singh Engineering Works

Respondent : Collector of C. Ex.

Judgement :

1.1 During the scrutiny of the appellants accounts in the course of visit by the Central Preventive Officers on 9-5-1987 and 28-1-1987 it was revealed that the appellants had taken Modvat credit during the period 1-4-1986 to 5-6-1986 on 1731.900 M.Ts of waste & scrap to the tune of Rs. 6,29,332.27p while they had made declaration of said 'waste and scrap' as input only w.e.f. 6-6-1986. It was alleged that in terms of Rule 57-G the Modvat credit could be taken only after a manufacturer had filed declaration with the Asstt. Collector of Central Excise indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final product and such other information as the jurisdictional Asstt. Collector may require and obtain dated acknowledgement of the said declaration.

1.2. It was also observed that the aforesaid credit taken illegally by the appellants was utilised by them during the period 6-6-1986 to 6-1-1987.

1.3. Accordingly, a show cause notice dated 23-4-1987 was issued alleging that the appellants illegally availed the aforesaid credit and fraudulently utilised the same towards payment of Central Excise duty during the period 6-6-1986 to 6-1-1987. The appellants were, therefore, asked to show cause as to why the aforesaid credit be not disallowed and why a penalty be not imposed on them under Rule 173-Q(1)(bb).

1.4. The appellants urged before the adjudicating authority namely, Collector of Central Excise that they had availed credit on the other steel scrap received by them from 1-4-1986, since the inception of Modvat Scheme w.e.f. 1-3-1986 and also when the Government of India clarified on 7-4-1986 that all scrap shall be considered/deemed to be duty paid but the Central Excise authorities did not inform the appellants to avail credit w.e.f 1-3-1986 on account of some misinterpretation. The appellants on receipt of information from Steel Furnace Association of India applied for credit on 6-6-1986. The said facility of deemed credit was withdrawn w.e.f. 29th August, 1986; this, according to the appellants, proved that the Govt. of India had intention to allow Modvat Scheme on 1-3-1986 on such old scrap received by the manufacturers w.e.f.

1-3-1986 even though the application for Modvat Credit was made subsequently. For this proposition the appellants relied on Rule 57-H(1). This rule, according to the appellants, gives a discretion to an Asstt. Collector to allow credit of the duty paid on inputs received by a manufacturer before filing a declaration under Rule 57-G if he is satisfied that (a) such inputs are lying in stock or received in the factory on or after the first day of March 1986, or (b) such inputs are used in the manufacture of final products which are cleared from the factory on or after the first day of March 1986 and that no credit has been taken by the manufacturer in respect of such inputs under any other rule or notification. It was also indicated in para 10 of their reply to the show cause notice that the appellants had purchased the instant steel melting scrap which had paid duty on or before 31st day of January, 1986.

1.5. The above contention of the appellants was not upheld by the learned adjudicating authority. He also did not find that there was any case for condonation of delay in making the declaration under Rule 57-H(1). Accordingly, he disallowed the credit of Rs. 6,29,332.27p and directed that it should be recovered. He also imposed a penalty of Rs. 5000/- under Rule 173-Q(1)(bb) ibid.

2. Learned advocate for the appellants has essentially made the same points which were urged before the adjudicating authority. They have also relied on a Trade Notice No. 7/87, dated 9-1-1987 of Hyderabad Collectorate. The appellants have also mentioned about their application to the Asstt. Collector made on 24-4-1987 for a deemed credit to the tune of Rs. 2,79,639.27p on 766.135 M.Ts of steel melting scrap received by them during the month of March 1986. This application for further credit, according to them is still pending with the Asstt.

Collector. They submit that this was brought to the notice of the adjudicating authority but he did not take any cognizance of this amount in his adjudication order.

3. Learned SDR, on the other hand, has reiterated the findings of the adjudicating authority.

4. We have considered the pleas advanced on both sides. In the first instance we observe that the appellants' reference to the further credit of Rs. 2,79,639.27p for deemed credit during March 1986 made vide their application dated 24-4-1987 to the Asstt. Collector of Central Excise has no bearing on the issue before use. That is a separate matter and it does not form part of the show cause notice leading to the impugned order which is now in appeal before us.

5. The appellants' main reliance is on Rule 57-H which deals with transitional provisions. I find from the appellants' appeal memo ground No. (6) that the provisions of Rule 57-H(1) have not been quoted fully by them inasmuch as the appellants have not quoted the proviso to the said sub-rule (1) of Rule 57-H. This proviso in unmistakable terms states that "provided that no credit under this sub-rule shall be allowed in respect of 'inputs' received on or after the 1st day of April 1986". It is apparent from the show cause notice that the credit has been taken by them during the period 1-4-1986 to 5-6-1986.

Therefore, the Asstt. Collector's discretion given in the first portion of sub-rule (1) of Rule 57-H cannot be made applicable in the instant case. On the basis of the above finding, therefore, there does not appear to be any merit in the appeal of the appellants.

5.1. There is, however, some confusion in the facts available on record. In para 10 of their reply dated 23-6-1987 to the show cause notice to the Collector, the appellants have very clearly stated that they had purchased the steel melting scrap on which duty was paid on or before 31st day of January, 1986. In ground No. (7) of the appeal memo, however, the appellants have stated that they had purchased M.S. scrap from March 1986 to 29-8-1986 from the market. If we take the statement that they purchased the steel melting scrap on which duty was paid on or before the 31st day of January, 1986 then in any case the appellants will not be entitled to any credit in terms of sub-rule (2) of Rule 57-H which states that "notwithstanding anything contained in Rule 57-A no credit of duty paid on the inputs used in the manufacture of a final product (other than those inputs in respect of which credit of duty was allowable under any rule or notification prior to the 1st day of March, 1986, when used in the final products) shall be allowed if duty has been paid on the inputs on or before 31st day of January. 1986". If, however, their contention in ground No. (7) is correct the position would be different insofar as the M.S. scrap purchased from the market during March 1986 is concerned and they would be entitled to the credit in terms of Rule 57-H(1) subject to satisfaction of the conditions mentioned therein. However, in respect of M.S. scrap received on or after 1-4-1986 to 5-6-1986 they will not be entitled to any credit because they declared the input waste and scrap only w.e.f. 6-6-1986.

6. Final position of disallowing or allowing the credit may be determined in the light of the above findings. In the facts and circumstances of the case, we do not find any reason to interfere with the penalty of Rs. 5000/- imposed by the Collector. It is not just a technical breach committed by the appellants. They have not only taken the credit illegally during the period 1st April 1986 to 5-6-1986 but they have gone on to utilise it for payment of duty on the final products which they would have otherwise had to pay by cash by making the deposits in the PLA.