

Collector of Central Excise Vs. Bharat Containers Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-07-1989

Reported in : (1990)(30)LC297Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Bharat Containers Pvt. Ltd.

Judgement :

1. This is an appeal filed by the department against the order of the Collector (Appeals) bearing No. V-2(83.12) 1794/88, dated 26-10-1988.
2. Brief facts of the case are that the respondents availed of the MOD VAT credit in respect of Aluminium Tubes without filing the proper declaration as required under Rule 57G of the Central Excise Rules.

They availed of the MODVAT credit from Feb. 87 to Sep. 87. Since proper declaration was not filed in respect of the goods, namely aluminium tubes, show cause notice was issued on 2-2-1988 for recovering the credit taken under the MODVAT scheme during the aforesaid period. In the adjudication proceedings, initiated by the Assistant Collector, demand for Rs. 63,642.48 was confirmed under the provisions of Rule 57-I (1) of the Central Excise Rules. The respondents went in appeal before the Collector (Appeals). The Collector (Appeals) without going into the other merits of the appeal, allowed the appeal of the respondents on the ground that the demand is barred by time and hit by limitation laid down under Section 11A of the Act and the Supdt. was not competent to decide the issue of

show cause notice. He, however, directed that the Assistant Collector or Supdt. is free to put up papers to the Collector of Central Excise, Bombay-II, for whatever action he deems fit.

3. Shri C.P. Arya, the learned SDR for the department, contended that Rule 57(I) is an independent provision. It is the specific provision for recovery of the erroneous credit taken under the MODVAT scheme.

Section 11A is applicable only in respect of short-levy, short-payment or non-levy, non-payment or erroneous refund amount. Hence the provisions of Section 11A are not relevant. In this case, the demand has been confirmed under the provisions of Rule 57-I (1) of the Central Excise Rules. He also pointed out that the declaration was filed with a description "sundry inputs" which is a vague one and under that category they wanted to claim MODVAT benefit in respect of Aluminium tubes. Since there is no proper declaration filed for this input, the department is justified in disallowing the credit and there was no opportunity for the department to go into a question of eligibility of this input and hence there is an element of suppression. He also cited the decision of the CEGAT South Regional Bench in the case of *Paro Food Products v. Collector of C.E.*, reported in 1988 (38) ELT 322 (Tribunal), wherein the Tribunal has held that non-filing of the declaration cannot be dismissed as technical formality and hence they are not entitled to MODVAT benefit.

4. Shri D.D. Gwalani, the learned advocate for the respondents, admits that no proper declaration was filed in respect of Aluminium tubes. All the same it is not the contention of the department that aluminium tubes are not the inputs entitled to credit under the MODVAT scheme in the case of the respondents. The aluminium tubes are notified as eligible for MODVAT. The mere technicality of not filing the declaration should not be viewed seriously for denying the credit. In this context he relied on the decision reported in 1988 (36) ELT 651, where the Tribunal has held that the formality of filing the declaration required under Notification No. 201/79 has been condoned by the Tribunal. He also cited the decision of this Bench in *S.M. Energee Teknik* case reported in 1989 (42) ELT 700 and argued that this Bench has taken the view that the provisions of Section 11A are applicable even

to recovery of MODVAT credit. He also cited the decision of the South Regional Bench reported in 1987 (37) ELT 478, wherein that Bench have held that the limitation of six months will always come into operation, whenever the department seeks recovery on the ground of error, even though Rule 56A does not prescribe any limitation period.

He, therefore, contended that the order of the Collector (Appeals) allowing their appeal on the grounds of time bar is legally correct and even on grounds of equity, since the input is eligible for MODVAT credit, denial of the same only on the ground of non-declaration is not justifiable.

5. After hearing both sides, we find that the main question to be decided is whether in the absence of specific time limit prescribed under Rule 57(I), does Section 11A come into operation and whether the time limit prescribed under Section 11A could be attracted.

Non-declaration of an input could no doubt entitle the department to deny the credit in respect of that input. This is the view taken by the South Regional Bench cited by the learned SDR. All the same, the question still arises and was not the issue before that Bench as to whether the recovery of MODVAT is to be done within the time limit prescribed under Section 11A or independently under Rule 57(I) of the Central Excise Rules, 1944. Section 11A comes into play wherever there is a short-levy, non-levy or erroneous refund. In this case, the MODVAT credit demanded by the assessee is in the nature of credit of the duty paid on inputs taken in the prescribed accounts, which can be utilised for payment of duty towards the final product. When the credit has been taken wrongly or it is in excess of the eligibility, it is a case of erroneous credit, which can be recovered by a demand. Such a demand cannot go beyond the purview of the statutory provisions of Section 11A of the Central Excises & Salt Act, 1944. Even if Rule 57(I) is sought to be invoked, it is to be read with the provisions of Section 11A, which is the statutory provision for recovery of any duty - either short-levy or non-levy or duty taken erroneously as proforma or MODVAT credit. This is the view taken by the South Regional Bench with regard to the recovery of erroneous credit taken under Rule 56A and also the prima facie view taken by this Bench with

regard to the recovery of erroneous MODVAT credit. Erroneous MODVAT credit, though could be demanded under Rule 57-I, is to be within the purview of the time limits laid down under Section 11A and cannot go beyond the time limit laid down therein. The impugned order of the Collector (Appeals) is therefore, correct in law. We, therefore, reject the appeal of the Department. Since the Collector (Appeals) has already directed that the papers be placed before the Collector of Central Excise, Bombay-II, he is to take a view on the question of applicability of extended period laid down in Section 11A and not in the facts and circumstances of the case.

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