Swastic Household and Industrial Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-08-1991

Reported in : (1995)(78)ELT279Tri(Mum.)bai

Appellant : Swastic Household and Industrial

Respondent : C.C.E.

Judgement :
1. This is an appeal directed against the order passed by the Collector (Appeals) bearing No. M-1873/TD-884/86/R, dated 26-6-1987, allowing the appeal of the department and setting aside the order of the Asstt.

Collector. The facts of the case are that the appellants were availing of proforma credit facility in respect of certain inputs under Rule 56A of the Central Excise Rules. A show cause notice was issued on 14-7-1981 covering the period 1-1-1980 to 24-2-1981, alleging that though D 3 declarations in respect of the receipt of the inputs have been filed by the appellants, the goods were taken into use before 48 hours prescribed for enabling the departmental officers to verify. When the adjudication proceedings were held, the Asstt. Collector set aside the demand for Rs. 1,96,655.94 but confirmed the show cause notice for recovery of the credit of the duty amounting to Rs. 3699.54. This order has been accepted by the appellant and this amount has also been paid.

However, the department went in appeal before the Collector (Appeals).

The Collector (Appeals) accepted the department's appeal and set aside the order saying that the extended period is invokable in this case.

2. Shri Moghe, that ld. Consultant pleaded that the show cause notice does not make any allegation of suppression. The Annexure to the show cause notice also clearly indicates that they have filed the D 3 Declaration in respect of the inputs; because of urgency they have utilized some portion of the goods and the remaining available for verification. There was no intention to avail proforma credit in respect of the goods not received by them nor is there any allegation that these goods have been diverted elsewhere before verification. It is only a procedural infraction on account of which substantive benefit conferred under the rule was denied. Since the amount confirmed, falling within the period of 6 months was insignificant, they did not want to protract the issue and paid the amount. All the same, when there is no allegation of suppression in the show cause notice and when there had been no mala fide intention, the question of invoking the extended period does not arise.

3. Shri Singh, the ld. JDR, on the other hand, contended that the fact that the part of the goods have been taken into use without waiting for 48 hours as laid down in the Rule is not disputed. This requirement has significance because it has revenue importance and to facilitate verification by way of proper officers regarding actual receipt of the goods. When this vital information has been suppressed, the extended period is invokable.

4. After hearing both sides, we find that even on merits, the appellants have a case. There is no allegation of diversion of the inputs received by them. The technical infringement of not waiting for 48 hours is condonable, if it is otherwise established that the inputs have been actually received and utilised in the manufacture, but now the case before us is only the question of invoking the extended period. We are in agreement with the submission of the ld. consultant that had the declaration been filed in time, the officers had a full opportunity to find out whether the inputs were available or have been taken into use before verification and they could have initiated action within the stipulated period. It is not a case that the goods have been taken into use even without filing D 3 declaration.

Moreover, the show cause notice does not make even a whisper about suppression of material facts. In this view of the matter, the Asstt. Collector's order does not call for interference particularly that portion of setting aside the demand beyond the period of six months. In our view, the Collector (Appeals) has erred in holding that in a case of this type, the extended period is applicable. We therefore, allow the appeal and set aside the order of the Collector (Appeals).