Zenith Computers Ltd. Vs. Collector of Central Excise

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SooperKanoon Citation : sooperkanoon.com/6743

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-16-1991

Reported in : (1995)(76)ELT169Tri(Mum.)bai

Appellant : Zenith Computers Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal directed against the Order-in-Appeal bearing No.SKM-170/90-B-I, dated 8-2-1990 passed by the Collector of Central Excise (Appeals), Bombay, rejecting the appeal of the appellants.

2. The facts of the case are that the appellants received cabinets which are inputs for manufacrure of computers from a small scale unit availing exemption under Notification No. 175/86. At the time of receipt of the inputs they took the credit as indicated in the Gate Pass namely Rs. 11,985/-. They detected later that they have not taken the higher notional credit eligible to them under the aforesaid notification and also permitted under Rule 57B of the Rules. Hence, they took the credit of difference between the higher notional credit and the credit originally taken on 12-11-1988. This credit was taken within 4 days of taking the original credit. This position was also indicated suitably in the RT- 12 Return filed for the month alongwith the extract of RG-23A Part II. However, the Supdt. objected to the taking of additional credit of Rs. 5992.50 on the ground that it should have been taken at the initial stage itself and not subsequently. The Supdt. on the request of the appellants passed an appealable order, against which an appeal was filed, which

was also rejected by the Collector (Appeals).

3. Shri M.H. Patil, the Ld. Advocate contended that there is no provision in Rule 57B of the Rules denying the higher notional credit being taken at a later date. In this case, by mistake they have taken the credit as per the Gate Pass, and they realised that, they are entitled to higher notional credit, since the inputs have been received from a small scale unit availing exemption on value basis. Hence, they have immediately rectified the mistake within four days and also even before the RT- 12 assessment, the position has been corrected and hence the benefit cannot be denied.

4. Shri K.M. Mondal, the Ld. SDR, on the other hand, pleaded that according to the Trade Notice issued by all Collectorates the assessees are to take the higher notional credit on receipt of inputs and there is no provision in the MODVAT Rules for allowing higher notional credit at a later date. MOD-VAT Credit is an instantaneous credit arrangement.

In this context, he referred to the Trade Notice issued by the Bombay III Collectorate No. 83/88 dated 5-10-1988 appearing in 1988 (19) ECR page 9C. In fact the Gate Pass itself should indicate the availability of higher notional credit and the amount of notional credit in such cases. Shri Mondal, the Ld. SDR, thus supported the order.

5. After hearing both the sides, I observe that there is no dispute with regard to the fact that the inputs have been received from a small scale unit, availing exemption under Notification No. 175/86 and in terms of that notification higher notional credit is eligible. The question now here is whether such a higher notional credit has to be taken immediately at the time of receipt of the inputs or subsequently.

I do agree that MODVAT Credit has to be taken at the time of receipt of the inputs and it is not denied that MODVAT Credit has been so taken; but when it has been erroneously taken on a lower side, ignoring the availability of higher notional credit, it becomes a mistake in taking the credit and in the absence of any specific bar in Rule 57B against rectification of such mistake, benefit of higher notional credit cannot be denied. The differential amount has been taken within four days in this case soon after they realised the mistake. After perusing Rule 57B of the Rules, I find that there is no specific bar in availing of higher notional credit entitled to them merely because the credit was taken at a subsequent date. In any case, in a case like this, where the initial credit was found to be taken wrongly and the mistake is sought to be rectified within a matter of four days, the higher notional credit cannot be denied to them. I also note the citation made by the Ld. Advocate in the case of Collector of Central Excise v. Mysore Lac & Paint Works Ltd. - 1991 (52) E.L.T. 590 (Tribunal), wherein the South Regional Bench of CEGAT has held that MODVAT Credit once taken does not disentitle the assessee to take additional credit, if it is found that credit taken was short at a later date. In view of this, I allow this appeal and set aside the order of the authorities below.