

Garware Plastics and Polyester Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-06-1992

Reported in : (1994)(70)ELT365Tri(Mum.)bai

Appellant : Garware Plastics and Polyester

Respondent : Collector of C. Excise

Judgement :

1. This is an appeal directed against the order in original No.SKM-253/90-B1 dated 12-3-1990.

2. The facts of the case for purposes of disposal of the appeal can be briefly stated as below:- The appellants, in their Vile Parle factory, were receiving Pancakes (video tapes) under modvat scheme, as inputs. They had taken modvat credit on three gate passes - Nos. 550 & 551 both dated 23-7-1988 and No. 593 dated 31-8-1988, which was objected to by the Department. It is needless to consider the objection with regard to G.P. No. 593 dated 31-8-1988, because the denial by the Assistant Collector with regard to the credit of duty covered by G.P. No. 593 was restored by the Collector (Appeals) and no appeal or cross objection with regard to this part of the order by the Collector (Appeals) has been filed by the Department. The issue to be considered is only with regard to the G.P. No. 550 & 551, where the Collector (Appeals) confirmed the order of reversal of modvat credit in respect of consignments allegedly received in part, without any approved duty payment documents. The Collector (Appeals) in his findings, has, however, allowed credit of the duty involved in the final consignment received alongwith Gate passes duly

endorsed in favour of the appellants' factory. The Assistant Collector in his adjudication order held that since the inputs covered by these two gate passes have been received in four parts on 4-1-1989; 18-1-1989; 19-1-1989 and 27-1-1989 and credits were also taken against four entries in RG 23A and since the goods covered by these G.Ps have not been received in whole lot, the credits were disallowed. However, the Collector (Appeals), in his order, held that the appellants are eligible for modvat credit on that part of the consignment finally received under original gate pass duly endorsed in favour of the appellants' factory, in view of Trade Notice No. 48/89 dated 12-5-1989 issued by Bombay Collectorate.

3. We have heard the arguments from both the sides. The undisputed factual position, which emerges on hearing both the sides, is that in the case of both the gate passes, the goods were sent under the gate passes from the appellants' own factory at Aurangabad to their own duty paid godown at Andheri, Bombay. Particulars of goods sent under these Gate Passes are as follows:- 550 dated 23-7-1988 356 Rs. 1,47,009/- 551 dated 23-7-1988 328 Rs. 1,87,678/- However, these inputs are not sent in whole lots against each gate pass from their duty paid godown at Andheri to Vile Parle factory against the G.Ps. duly endorsed. They were claimed to have been sent in four lots under their own delivery challans. It is also observed that the delivery challans do not indicate the marks and numbers of the boxes sent. The only particulars available are description and types of goods. It is claimed that the total number of boxes sent under the four delivery challans is equal to the total number of boxes covered by both the gate passes. We also find that it is not a case, where even a separate delivery challan is prepared for each gate pass, on the contrary, one delivery challan covers a number of boxes claimed to have been received under more than one gate pass. Excepting the arithmetical tally of total number of boxes and possibly of the type of goods no co-relation is available with regard to inputs received vis-a-vis the G.Ps., which are endorsed. A tally is attempted on the reverse of the gate pass. Even in that, no particulars of duty involved on the goods covered by each challan are available. It is also not disputed that only after the despatch of the final consignment, gate passes duly endorsed could be received by the unit at Vile Parle but credits have been taken in four parts - two on 12-1-1989 and two more on 24-1-1989.

In the circumstances, the question to be looked into is whether the part consignments earlier received under their own delivery challan could be construed to have been received under proper and authorised duty payment documents.

4. Rule 57B specifies that no credit shall be taken, unless the inputs are received in the factory under the cover of Gate pass, AR-1, Bill of entry or any other document prescribed by the Board evidencing payment of duty. It is not the case of the appellants that their own delivery challans for removing goods from their godown at Andheri have been approved by the Board for purposes of Rule 57G. Even for construing substantial compliance of the nature of duty payment, delivery challans should have been prepared gate passwise. Here we find that one delivery challan is claimed to cover goods from two different gate passes. No particulars of duty paid on each consignment covered by delivery challan are available. It is also not disputed that there is a prescribed document for meeting such movements from duty paid godown - namely the subsidiary gate pass - which could have been obtained from the concerned Range Superintendent and the goods sent alongwith that.

They have not chosen to follow this procedure. No reasons are forthcoming as to what prevented them from getting the subsidiary gate pass. Moreover, at the time of receipt of the goods, they are to be accompanied by prescribed duty payment documents. In the case of part consignments received in the above manner, even a post-mortem verification becomes difficult, without marks and numbers indicated in the delivery challan, which could be co-related to the gate passes in question. Even the entries made in the RG 23A are in terms of number of pieces of pancakes and not in terms of boxes. It was pleaded that each box contained 10 pieces and delivery challans are in terms of boxes.

But when even delivery challan is not exclusively for each of the gate pass but they are claimed to be mixed covering two gate passes, identity becomes difficult to be established. Even for taking a liberal view, the picture emerging from the documents does not clinch the claim made by the appellants that the goods received under delivery challan only relate to these two gate passes and may not relate to some other receipts. We may not be able to agree to an arithmetical tally

merely based on the total number of boxes covered by the two gate passes.

Burden is heavily cast on the appellants to establish the duty paid nature of the inputs, which have been received without the cover of authorised duty paid documents. It is not a case of deemed credit being taken on the market purchase. When the documents, even on a post-mortem consideration, could not clearly establish co-relation with gate passes, which are endorsed, their claim cannot be said to have been established beyond reasonable doubt. Hence, we are not inclined to interfere with the order passed by the Collector (Appeals). In the result appeal is rejected.

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