

Collector of Central Excise Vs. Roshan TIn Printers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-02-1994

Reported in : (1994)(74)ELT325Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Roshan TIn Printers

Judgement :

1. This is an appeal directed against the order-in-appeal No.GS/815/B-I/93, dated 22-7-1993 filed by the revenue in regard to the findings of the Collector (Appeals) on the question of allowing the appeal of the Respondents with regard to their eligibility for availment of modvat credit in respect of certain inputs. Though, the order of the Collector (Appeals) deals with the aspect of valuation, the Department has not come in appeal on valuation aspect and the Respondents have also not filed any cross-objection or cross appeal either with regard to the Department's appeals or with regard to the finding regarding the valuation. Hence, the issue involved in this appeal is only with regard to the modvat credit on certain inputs brought by the respondents.

2. The facts of the case as given by the Id. SDR, Shri Mondal are as follows: The respondents are engaged in the manufacture of coated and printed aluminium foils. They not only manufacture these items on their own but also manufacture these items on job work basis on the basis of the raw materials supplied by the principal suppliers. In some cases, they were under Rule 57F(2) and return the finished products back to the original suppliers, while in some cases they receive

the duty paid inputs and take modvat credit on them, which they utilise for clearance of the finished products on payment of duty and such duty paid finished products are returned to the suppliers of the raw materials. They filed a declaration on 1-8-1988, wherein, they had declared aluminium sheets under Ch. S.H. 7607.10 and they were receiving aluminium sheets in the form of coils not exceeding 0.2 mm thickness. The admitted position by both the sides is that,, while they had declared the aluminium coils and the gate passes also show aluminium coils, but they were cut to the required sizes by the suppliers of the raw materials and they were sent to the respondents' factory, where printing and lacquering is done. For carrying out cutting of the coils, the requisite permission under Rule 57F(2) has not been obtained by the suppliers of the input materials, Shri Mondal referred to one of the show cause notices among the six show cause notices issued (SCN dated 27-9-1989) which refers to the following allegation: The declaration is for aluminium coils classifiable under 7607.10, whereas the goods which are received are in the form of aluminium sheets. Aluminium coils were cut into sizes by another job worker and sent to the respondents. Gate passes were not in the name of the Respondents. The duty paying documents were also not endorsed in favour of the respondents. The goods were not in the original packing. They have not obtained permission under Rule 57F(2) for cutting the aluminium coils into sheets.

On the basis of these allegations, the Asstt. Collector gave a finding that the respondents have deliberately not complied with the provisions of Rule 57F(2) of the Central Excise Rules by obtaining prior permission. Though he agrees that the input materials can be sent directly to the job worker for cutting, before they are received in the respondents' factory, he contended that the respondents, even knowing this provision, have not taken the requisite permission and hence it is a deliberate omission and credit of duty is therefore, not admissible. As per Rule 57G of the Central Excise Rules, it is mandatory upon every licensee availing of modvat facilities to declare the full description and correct classification of the inputs, which they intend to avail credit of duty. Since the assessee has failed to comply with the provisions of the said Rules, the credit of Central Excise duty availed on such inputs viz. aluminium stock, aluminium sheets, aluminium sheets in coil form etc. is not admissible. In this view, the Asstt.

Collector, confirmed the demand for duty amounting to Rs. 32,23,961 and also imposed a penalty of Rs. 1,500/- on the respondents. On appeal before the Collector (Appeals), he held in relation to their eligibility of modvat credit that both aluminium coil and aluminium sheets not exceeding 0.2 mm are classifiable under Heading 76.07 and the Chapt. note 76 makes it clear that the flat-surfaced products defined therein, would be considered whether they are 'coiled or not'. The Tariff does not recognise a distinction between these products, whether they are coiled or not. The goods are transported as coils for the sake of economy and convenience for handling. So long as it is established that the sheets can be co-related with the coils at the time of despatch, modvat credit cannot be disallowed and there is no requirement in the rules that the goods should be in original packing. He also held that the finding of the Asstt.

Collector that some of the documents are not endorsed in favour of the respondents is not borne out by evidences and he has not discussed it and this portion of his order is not a speaking order and hence he has set aside. He has also held that in so far as the allegation regarding debit of duty in RG 23A Part II instead of PLA, the Asstt. Collector has not mentioned or discussed this aspect of the allegation at all. All the same, another demand on the same issue has been confirmed, presumably, in respect of the same allegation of availment of modvat credit. Hence, he has directed de novo determination of this demand. The present appeal from the revenue is against the aforesaid finding of the Collector (Appeals).

3. Shri Mondal, diligently contended that aluminium coils and aluminium sheets are two distinct forms and if the inputs are received in the form of aluminium coils in the respondents' factory, they cannot be said to be covered by the description given in the Gate Passes. It is also an undisputed fact that the goods which were received from the Indian Aluminium Company by the suppliers of these inputs were not sent, as they were received, after endorsement of G.Ps. They have been taken to another job worker, where they were cut into sizes and thereafter received by the respondents. Though the Gate Passes have endorsement for transfer, it is not transferred in the form in which the inputs received. He has also submitted that in the absence of particulars of the job workers for cutting the coils into sheets, they cannot be said to be covered by the Gate Passes issued,

especially, when the descriptions do not tally. Hence, the Collector (Appeals) is not justified in allowing the benefit. The order of the Asstt.

Collector is, therefore, required to be sustained. As regards the de novo determination of the demand on account of wrong debit in RG 23A Part II, he does not have any objection to this part of the order. On the question of penalty, he pleads that since there is a deliberate violation of Rule 57F(2) consequent on which they have availed of irregular benefit of modvat, the penalty imposed by the Assistant Collector is well justified and is required to be restored.

4. Shri Bhatt, the Id. Advocate, appearing on behalf of the respondents, does not dispute the facts but only pleads that in the case of glass bottles, initially delivered by the manufacturer of bottles to printer, shown as consignee in the Gate Pass and after printing of the bottles supplied to the manufacturer of aerated water under Gate Pass duly endorsed, they were held to be eligible for modvat credit. He referred to the decision of the North Regional Bench in the case of Amritsar Bottling Co. reported in 1993 (68) E.L.T. 140 (Tri.).

He also pleaded that when there is no allegation that the duty paid materials covered by the Gate Pass (though in the form of cut sheets) were received and utilised in the manufacture of final product, modvat credit cannot be denied. He also submits that the remand order by the Collector (Appeals) is with regard to the duty demand in respect of the same modvat credit, which is alleged to have been irregularly availed of. There cannot be a double demand on account of the same allegation.

If the order of reversal is sustained, the balance as available in RG 23A Part II can be reversed and if it is not so, it has to be debited in PLA. There cannot be a double demand for both reversal and again debit in PLA. As regards the penalty, he admitted that there is a violation of Rule 57F(2) but it is not deliberate, because they do not gain anything by deliberately not obtaining the permission.

5. After hearing both the sides, we find that there is no dispute that the aluminium coils cleared on payment of duty from the Indian Aluminium Company on various gate passes addressed to the different parties, who supplied the input materials to

the respondents after endorsing the Gate passes or by obtaining the subsidiary gate passes in the name of the respondents, have been received in the respondents' factory. Though there is an allegation that the Gate Passes have not been properly endorsed, on going through the Gate Passes through which we have been taken by both the sides, we find that in all these cases the Gate Passes were endorsed in the name of the respondents and wherever subsidiary gate passes issued, they were in the name of the respondents. The Assistant Collector has also not pointed, which of the Gate Passes are not endorsed, nor has he indicated as to how the endorsement is defective. In the circumstances, such a cryptic finding of the Assistant Collector has been rightly rejected by the Collector (Appeals). Now going by the factual position, the main thrust of the allegation is that when they have declared aluminium coils and the Gate Pass also shows the item as aluminium coils, the actual receipt of the input was in the form of aluminium sheets. This is the main crux of the allegation, for which the explanation given is that the supplier of the input materials cuts these coils into sheets so as to facilitate printing and lacquering by the respondents. The Department does not make an allegation that these sheets have not been obtained out of the aluminium coils received on payment of duty by the suppliers of input materials. There is no averment to this effect either in the show cause notice or in the order. So long as nexus of the sheets with the duty paid aluminium coils received by the suppliers of the input materials has been established and these goods have been transferred to the respondents by suitable endorsement on the Gate Passes, the requirement of taking credit under Rule 57G should be construed to have been complied with. Rule 57F(2) is a procedural requirement and the procedural requirement is meant for establishing proper co-relation with the duty paid inputs initially received, till they go into the final product. So long as there is no dispute that the duty paid materials received by the suppliers have come to the hands of the respondents after they are cut into sheets, the procedural non-compliance cannot be held against them for denying the substantive benefit of the modvat facility. In this view, we do not find any reason to disagree with the reasonings adopted by the Collector (Appeals) for extending the modvat benefit in this case. Appeal from the Revenue in this regard is rejected. As regards the question of duty demand on account of wrong debit in RG 23A Part II, the full facts are not reflected either in

the order of the Assistant Collector or in the order of the Collector (Appeals). We are to observe that if the duty demand is in respect of the same issue of reversal of modvat credit for the same reason, then the same is not sustainable. But if the duty demand is on account of irregular credit and debit in the modvat account not pertaining to this issue, it has to be considered de novo by the Assistant Collector. In any case, when there is no cross appeal from the respondents on this de novo consideration, we cannot disturb de novo consideration ordered by the Collector.

6. As regards penalty, there is a clear admission that they have violated the provisions of Rule 57F(2). Hence, the respondents are required to pay the penalty. Accordingly, we restore the penalty ordered by the Assistant Collector, which is not unreasonably high.

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