Collector of Central Excise Vs. Devon Plastics Ltd.

Collector of Central Excise Vs. Devon Plastics Ltd.

SooperKanoon Citation : sooperkanoon.com/7296

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Feb-08-1994

Reported in : (1994)LC224Tri(Chennai)

Appellant : Collector of Central Excise

Respondent : Devon Plastics Ltd.

Judgement :
1. This appeal is against the order of the Collector of Central Excise (Appeals), Madras. Under the impugned order the learned Collector (Appeals) has allowed the benefit of Modvat Credit to the Respondents even though the original gate-pass for the consignment cleared from the factory i.e. Indian Petro-Chemical Corporation Ltd., Baroda (IPCL) showed the consignees as M/s. Indian Petro-Chemical Corporation Ltd., Madras and not the Respondents. According to the authorities, the goods were purchased by the Respondents from an agent of IPCL Corporation Ltd. viz. V.D. Swamy & Co. Ltd. and the gate-pass in question covering part of the consignments has been passed on to the Respondents and the gate-pass has been endorsed by M/s. IPCL Ltd. in the name of the Respondents. The original authority in this regard while denying the benefit of Modvat Credit has held as under: "As per Rule 57G, Sub-rule (2), a manufacturer who is availing of Modvat and has filed a declaration under Sub-rule 1 of the said rule can take credit of the inputs at the time of their receipt in the factory if they are accompanied by a gate-pass, AR1, a Bill of Entry or any other document as may be prescribed by the Central Board of Excise and Customs, in this behalf

evidencing payment of duty on such inputs.

The procedure for availing credit in case a part of the quantity covered by a gate-pass is supplied remained the same as under Rule 56A of the Central Excise Rules, 1944. The manufacturer should have obtained a subsidiary gate pass duly certified by the Superintendent, on the basis of which credit should have been taken.

This is the correct procedure to be followed where the original manufacturer supplies the duty-paid inputs to another person (Dealers/Stockists/Branch Office etc.) who store them in a duty-paid godown and subsequently, supplies inputs to different manufacturers.

It is only when the entire consignment cleared from the originating factory and cleared under a single gate-pass are purchased by the manufacturers availing of MODVAT as such, that the gate-pass itself can be endorsed in the name of the actual user, who may take credit on the basis of such endorsement and none else." "I have carefully considered the submissions of the learned Advocate. I find that provisions of Rule 57G quoted by the Asstt.

Collector has been complied with, inasmuch as the gate-pass has been submitted along with goods at the time of receipt of the inputs in the factory. Merely because there is a procedure under Rule 56G which may be by executive instruction or by Collectorate Trade Notice, it will not be correct and proper to deny the inputs credit which is otherwise admissible and there is no doubt about their admissibility." "It is not stated that under Rule 57G there is any procedure laid down by any Trade Notice etc. whatever that may be Rule 56A cannot be adopted for Rule 57G automatically and moreover, when there is no doubt payment of duty on the inputs, denial of input duty credit will not be correct and proper." 3. The learned appellant-Collector has urged the following grounds in his grounds of appeal: "(i) Rule 57G of Central Excise Rules sets out the procedure to be observed by the manufacturer intending to take credit of duty paid on inputs under Rule 57A. In terms of the first proviso to Sub-rule (2) of the aforesaid rule, no credit shall be taken unless the imputs at the time of their receipt in the factory are accompanied by a gate-pass, an AR-1 a Bill of Entry or any other document as may be prescribed by the Central Board of Excise and Customs in this behalf evidencing the payment of duty on such inputs.

(ii) In the instant case, the supply of LDPE granules has been claimed by M/s. Devon Plastics Ltd. as a part of a consignment received under GP1 by M/s. Indian Petro-Chemical Corporation Ltd. and they had taken credit on the basis of that GP 1. Thus the credit was taken on the basis of invalid GP since the destination as well as the quantity shown in the gate- pass would not tally with the actual quantity received by them. Therefore the order of the Assistant Collector, Madras VI Division expunging the credit on the duty on such inputs is correct in law." 4. The learned D.R. drew our attention to the wording of Rule 57G and pleaded that under this Rule it was mandatory on the part of the Respondents to have had in their possession documents as are prescribed. He pleaded that the gate-pass under which the consignment was sent to the assessee should have been in their name to avail the benefit of Modvat Credit. In the present case he pleaded admittedly the consignment which was sent under the gate-pass of the manufacturer who paid duty in respect of the goods had not been made out in the respondent's name and the gate-pass was in the name of their own Branch Office and the goods were thereafter supplied to the Respondents through their agency in Madras. He pleaded that the gate-pass which had been made in the name of the manufacturer's Branch Office cannot be considered valid gate-pass for the purpose of Modvat Credit even if it is endorsed by the local office of the manufacturer in favour of the Respondents. He pleaded that mandatory requirement of production of gate-pass covering the goods had not been complied with.

5. There is none for the Respondents. The Respondents in their written submissions which have been described as an Affidavit by the Respondents have urged that while accepting the position that the goods have been brought into their factory under the cover of gate-pass issued by M/s. IPCL, Baroda to their Branch Office at Madras, the said gate-pass has been endorsed in their favour and that against the duty shown as paid in respect of the gate-pass, they have taken Modvat Credit of the proportionate quantity purchased and delivered to them out of the total quantity as indicated in the gate-pass. They further submitted that having

regard to the endorsement in the gate-pass made by the IPCL Ltd. it cannot be said that the gate-pass did not properly reflect the destination as well as the quantity of the goods and the duty payable on the same. They have also raised a plea of limitation.

6. We have given a careful thought to the pleas urged by both the sides. In terms of Rule 57 G inputs in respect of which Modvat Credit is sought to be taken by the assessee should have been received in the factory under the cover of a gate-pass, AR 1, Bill of Entry or any other documents as may be prescribed by the Central Board of Excise & Customs. The relevant portion of the said rule for the purpose of convenience of reference is reproduced below : (2) A manufacturer who has filed a declaration under Sub-rule (1) may after obtaining the acknowledgement aforesaid, take credit of the duty paid on the inputs received by him : Provided that no credit shall be taken unless the inputs are received in the factory under the cover of a Gate Pass, an AR-1, a Bill of Entry or any other documents as may be prescribed by the Central Board of Excise and Customs, [constituted under the Central Board of Revenue Act, 1963, (54 of 1963) in this behalf evidencing the payment of duty on such inputs]." Gate-pass is a prescribed document under Rule 52A in respect of excisable goods cleared from a factory and this has been described as GP 1. Among other particulars in this form are - Name and address of the consignee, manner of transport, date and time of removal which should be shown in figures and words. All these particulars have been prescribed to ensure that the gate-pass is not misused for double or treble transport of excisable goods and the gate-pass is valid for transport of the goods in respect of consignees to whom these are consigned and the mode of transport etc. prescribed. We observe that the moment the goods have been received at the consignee's end the validity of the gate-pass so far as the transport of the goods is concerned, can be taken to have run out and the gate-pass only remains as evidence of clearance of the goods on payment of duty and the same gate-pass can only be revived by following the procedure prescribed in this regard as set out under Rule 57G. Re-endorsement of gate-pass in respect of part of the consignment sold is not one of the prescribed modes. For bringing the goods for Modvat purposes, the proper course for the assessee was to have had the gate-pass re-endorsed by the jurisdictional Central Excise Officer after getting the particulars regarding

consignment verified with reference to the gate-pass if such a course had been prescribed under Rule 57G. This admittedly had not been done. We observe that a strict view has to be taken in regard to the documents under the cover of which the goods are brought in a factory for Modvat purposes. The documents as have been prescribed are with a view to ensure that duty-paid goods alone are received in the factory and it is obligatory that statutory documents as set out under Rule 57G alone are taken into consideration for the purpose of Modvat Credit. There is possibility of misuse in case consignees on their own are allowed to endorse the gate-pass after the goods have been cleared from the factory and received by them and a part of the same are resold. It would be difficult to verify the identity of the goods after the original consignment is broken up for sale. In this view of the matter, we hold that the learned lower appellate authority has been in error in allowing the appeal of the Respondents. We, therefore, set aside the impugned order and allow the Departmental Appeal.