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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-28-1994

Reported in : (1994)(54)LC221Tri(Delhi)

Judge : S Bhatnagar, Vice-, J Balasundaram

Appellant : Hero Cycles Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is an Appeal against the Order of Collector of Central Excise, Chandigarh dt. 26.2.1993.

2. Ld. Counsel stated that the Appellants are manufacturer of C.R.Strips and the Modvat Credit is available to them on inputs namely H.R.coils, CR coils and ship strips. He further stated that the Appellants are purchasing inputs from M/s. Tata Iron & Steel Co. Ltd. (TISCO). The supplies are received from their stockyard at Ludhiana being run by consignment agent M/s. Salig Ram Shiv Prasad, Ludhiana.

3. M/s. TISCO has been permitted to issue certificates regarding payment of Central Excise duty on delivery challans-cum-invoice prescribed under Rule 57G(2) as duty paying documents.

4. In this connection, they would like to refer to Trade Notice No.68/86 dt. 23.12.1986 and No. 33/92 dt. 4.8.1992.

5. The Deptt. has sought to deny the benefit on the ground that the document issued by M/s. Salig Ram Shiv Prasad, Ludhiana, was not acceptable as a duty paying document.

6. However, it was their contention that M/s. Salig Ram Shiv Prasad are only custodians of duty paid goods of TISCO kept in the stockyard. And it implies that duty paying certificates signed by M/s. Salig Ram Shiv Prasad for TISCO related to stockyard of TISCO and fully meet the requirement of the Rules and Trade Notices cited above.

7. They would also rely in support of their contention on the Tribunal's Order reported in 1990 (29) ECR 170,1990 (31) ECR 111, and 1990 (30) ECR 381. It was also their submission that they have filed a copy of the Agreement between M/s. TISCO and M/s. Salig Ram Shiv Prasad dt. 20.1.1992 which shows that the stockyard is of M/s. TISCO and the proprietorship of the stockyard vests with M/s. TISCO and it is the Area Manager of M/s. TISCO who has made out the invoice and the payments made direct to TISCO and the consignment agent operated under TISCO overall supervision, guidance and instructions.

8. They have also filed copies of the Challans which bear the certificate of payment of duty and mention of the TISCO officer who controls the agent. In the circumstances, there is no ground for the Deptt. to deny them Modvat Credit.

9. Ld. Counsel also stated that in the subsequent cases, the same Collector (Appeals) had allowed the Appeals on the basis of a Trade Notice No. 81/89-CE dt. 5.9.1989 issued by Indore Collectorate.

10. Ld. DR strongly opposed the prayer. He stated that Ld. Collector (Appeals) had disallowed or rejected the petition of the Appellants on the basis of another Trade Notice No. 33/92 dt. 4.8.1992 on the grounds mentioned in the Order. Therefore, it was a case of two different Trade Notices issued by two different Collectorates about the same matter.

11. It was also his contention that as per the Rules original duty paying documents were required to be produced. And this is the settled position in law. Indeed even

attested photocopies are not accepted. In this connection, he would like to cite Tribunal's Order reported in 1993 (63) ECR 344.

12. We observe that the submissions of Ld. Counsel have a strong force.

We observe from the copy of the Agreement between M/s. TISCO and M/s.

Salig Ram Shiv Prasad that the Appellant is right in pointing out that the stockyard is in fact that of TISCO and is being controlled by TISCO. Para 2 of the TISCO letter dt. 20.1.1992 addressed to M/s. Salig Ram Shiv Prasad, Ludhiana mentions Inter alia that: The entire arrangement will, however, operate under the overall supervision, guidance and instructions of our officer stationed locally or the area Manager....

The properly in the goods lying on consignment account in or custody will vest with us...

13. The sum and substance of these paras appears to be that M/s. Salig Ram Shiv Prasad will act as Consignment Agent for TISCO and will be mainly responsible for custody and documentation and do the work on behalf of TISCO. The photocopies of some of the Challans also shows that apart from Salig Ram Shiv Prasad, they have also been shown for TISCO. They also bear a certificate that the duty has been paid and also given the gate pass number/consignment number Ad.V/Inspection voucher/Railway receipt number.

14. In the circumstances, there is no reason why these documents should not be accepted as a proof of payment of duty particularly when TISCO's Challan cum invoices and certificates are admittedly acceptable to the Deptt. Of course it is open to the Deptt. to verify or cross-check or otherwise satisfy themselves in any particular case or all cases as may be deemed appropriate as precautionary measure or otherwise.

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