

H.C.L. Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-28-1994

Reported in : (1994)LC43Tri(Delhi)

Appellant : H.C.L. Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The issue for determination in this appeal is the eligibility of the appellants to Modvat credit of Rs. 4,07,871.51 P. availed of by them on 28-1-1988 on Selenium drums and ASM Blades-280 utilised as inputs in the manufacture of Photocopiers cleared during the period April 1986 to April 1987.

2. Initially, the appellants' stand was that these items did not form part of the Photo-copying Machines as they were imported and supplied under separate invoices and therefore, were in the nature of consumables and hence not includible in the assessable value of the finished product namely Photocopying machines. Vide order dated 20th October, 1987, the Assistant Collector held that the above-mentioned items are parts of Photo-copying machines and are to be included in the value of the Photo-copying machines. This order was confirmed by the Collector (Appeals) by order dated 4-3-1987. On the introduction of the Modvat Scheme in March, 1986, the appellants filed a declaration containing details of inputs and final products on 10-3-1986. At that point of time, there was no proforma prescribed for the Modvat declaration.

3. In December, 1986, the Excise Department wrote to the appellants directing them to submit the declaration in the prescribed form and on 20-12-1986, the appellants filed another declaration. Since the contention of the appellants was that the two items did not form part of the finished product, they did not take credit of duty paid on these inputs in RG 23A. Subsequent to the order of the Collector (Appeals), dated 5-3-1987 confirming that the items were to be included in the assessable value of the Photo-copying machines, the appellants submitted a Modvat declaration for Selenium drums and also informed the department that earlier they were not claiming Modvat on this item as it did not form part of the machines. On 28-1-1988, the appellants took credit of duty paid on Selenium drums and ASM Blades-280 used in the manufacture of Photo-copying machines cleared during the period 1st April 1986 to 30th April, 1987.

4. A show cause notice dated 26-7-1988 was issued to the appellants proposing disallowance of Modvat credit for contravention of Rule 57G on the ground that under the Modvat Rules, no credit of duty paid on inputs prior to first February, 1986 can be taken. The Adjudicating authority disallowed the credit holding that the Modvat declaration had been filed on 22nd March, 1987 and therefore, Modvat credit for the period prior to that date, was not permissible as the Modvat rules had not been complied with.

5. The lower Appellate Authority confirmed the order of the Assistant Collector holding that the goods were actually received by the appellants well beyond one year from 20th December, 1986 i.e. the date on which the appellants filed the Modvat declaration and started maintaining RG 23A register in respect of the disputed items only from 28-1-1988 onwards. Hence this appeal.

6. Shri V. Sridharan, learned Counsel contends that the appellants had already filed a declaration in March 1986. Even if it is construed that the declaration had been filed only on 20-12-1986, still none of the requirements of Rule 57G have been contravened as the inputs had been received prior to filing of the declaration and credit was availed of only subsequently. He relies upon the decision of this Tribunal in the case of Kerala State Electronics Development Corporation [1991 (55) E.L.T. 128] in support of the proposition that there is nothing in the rules

which stipulates that inputs must be received by an assessee only after the filing of the declaration under Rule 57G. He submits that at the time when the inputs were received and when the final products were manufactured and cleared, the valuation dispute was pending and therefore, it was not possible for the appellants to avail of Modvat credit till the dispute was settled in March, 1987. He relies upon the order of the Tribunal in the case of Sundaram Fasteners Ltd. v. CCE, Madras, 1987 (29) E.L.T. 275 (Tri.) on the doctrine of impossibility.

He submits that the appellants have satisfied the condition of Rule 57A, 57F(1), 57G(1), (2) and Rule 57H is not attracted to the facts of the case as the inputs were not lying in stock or received in the factory after filing the declaration under Rule 57G. Lastly, he submits that the question of time-bar will not operate against the appellants as it has been held in the case of CCE v. Premier Cables Co. Ltd., 1991 (56) E.L.T. 853 (Tri.) -1991 (37) and Veekay General Industries v. Collector of Central Excise, New Delhi [1993 (44) ECR 224 (Tri.)] that credit can be taken subsequently and within a reasonable period of time. He relies upon the judgment of the Hon'ble Bombay High Court in the case of Kirloskar Brothers Ltd v. Union of India and [1988 (34) E.L.T. 30 (Bom.)] to support his argument that in a situation such as the one covered by this appeal, Modvat credit is available.

7. Shri V.C. Bhartiya, learned DR submits that Rule 57G and Rule 57H have to be read together and not independently of each other and the case has to be viewed in the context of the entire Modvat scheme which provided that filing of declaration, utilisation of inputs in the manufacture of final products and subsequent availment of credit and not for availment of Modvat credit on inputs used in final products that have been cleared even prior to the filing of the declaration under Rule 57G. He further submits that the appellants have suo motu availed of credit which is in the nature of refund beyond the period of 6 months from the date of declaration and therefore, the refund is barred by limitation and in this regard, he cites the decision of the Tribunal in the case of Mysore Lac & Paint Works Ltd. reported in [1991 (52) E.L.T. 590]. He therefore, urges that the order of the lower Appellate authority be upheld and the appeal rejected.

8. We have heard both the sides and carefully considered their submissions. We are unable to accept the contention of the learned Counsel that a declaration under Rule 57G of the Central Excise Rules in respect of the goods in question had been filed in March, 1986 as it is only in March, 1987 that the items were held to be includible in the assessable value of the output. It is only on 23rd March, 1987 that the requisite declaration for availing Modvat on Selenium drums was filed and in the covering letter thereto, the appellants have stated that they had not been claiming Modvat prior to that date, as the drums were not forming part of the machine. However, admittedly at the time when the inputs were received and final products manufactured and cleared, it was not possible for the appellants to avail of Modvat credit till the valuation dispute was settled by the order of the Collector (Appeals) in March, 1987. The doctrine of Impossibility has been discussed in the judgment of the Hon'ble Bombay High Court in the case of Kirlosker Brothers Ltd. v. Union of India [1988 (34) E.L.T. 30] para 8 of which is reproduced below - In the instant case also, we find that the case of the appellants till March, 1987 was that the Selenium drums did not form part of the Photo-copying machines as they were in the nature of consumables, and it is also not a case where the appellants had voluntarily paid the differential duty, which was paid by them subsequent to March, 1987 in pursuance of the order of the Assistant Collector quantifying the demand in terms of the order of Collector (Appeals) dated 5-3-1987.

9. The learned Counsel is correct in his submission that Rule 57-G has not been contravened as credit was availed of only subsequent to the filing of the declaration which has been held to be permissible by the order of the Tribunal in the case of Kerala State Electronics Development Corporation reported in 1991 (55) E.L.T. 128. The same view has been expressed in the case of Collector of Central Excise, Bombay v. Formac Engineering Ltd. - 1991 (56) E.L.T. 791 (Tribunal) wherein it has been held that credit cannot be denied when goods lying in stock were eligible for Modvat and credit was availed of only after filing of the declaration even if the prior permission for availing Modvat credit had not been obtained. In the circumstances of this case, all that remains to be seen is whether the availment of credit in January 1988, is barred by limitation. As we have earlier observed, the duty on Selenium drums was paid subsequent to March 1987 and credit was availed in January 1988 therefore, appears to have been taken within a

reasonable period of time. In the case of Collector of Central Excise v. Premier Cable Co. Ltd. - 1991 (56) E.L.T. 853 (Tri.) the Tribunal has held that Rule 57G has not specified any time limit for taking Modvat credit on receipt of goods inside the factory. As regards the Tribunal's decision in the case of Collector of Central Excise, Bangalore v. Mysore Lac and Paint Works Ltd. [1991 (52) E.L.T. 590], the Tribunal has observed that in the absence of any specific rule, it has to be held that respondents can take credit due to them within a reasonable time so long as they satisfy all other criteria for eligibility of Modvat credit and by way of obiter dictum, the Tribunal observed that the period of 6 months can be taken as a reasonable limit for taking credit and the Tribunal has not held that credit can be taken only within a period of 6 months.

10. Modvat credit can be availed of even at a subsequent stage as long as the appellants can establish its eligibility for the benefit and the quantum of relief admissible to it as held by the Tribunal in the case of Veena Organics [1992 (59) E.L.T. 87]. In the case of Haryana State Electricity Board v. Collector of Central Excise [1988 (37) E.L.T. 81], the Tribunal held that it would not be proper to deny the benefit available to the appellants under Notification No. 201/79 only for the reason that the procedural part had not been complied with and held that the benefit should be granted if established by acceptable evidence. In this case also, Modvat has been availed of on the basis of the records evidencing payment of duty on the drums.

11. In the light of above discussion, we hold that in the peculiar facts of this case, the appellants are entitled to Modvat credit on Selenium drums used in the manufacture of Photo-copying machines cleared during the period April 1986 to April, 1987, set aside the impugned order and allow the appeal with consequential relief, if any, due to the appellants.

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