Rolax Applied Components Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-27-1994

Reported in : (1995)LC60Tri(Delhi)

Appellant : Rolax Applied Components

Respondent : Collector of C. Excise

Judgement :

1. The above appeal arises out of the order of the Collector of Central Excise, New Delhi, confirming a demand of Rs. 8,64,983.58 representing Modvat credit alleged to have been wrongly availed of by the appellants between April 1986 and August 1987 and imposing a penalty of Rs. 1 lakh for contravention of the relevant rules. The brief facts of the case are that on the basis of information gathered, the Central Excise Preventive Officers visited the factory premises of the appellants who are manufacturers of auto parts and accessories. They were found to be availing Modvat credit in respect of copper wires and chemicals (nickel sulphate, nickel chloride, boric acid and chromic acid etc.) without actually bringing the same into the factory and without utilising the same for manufacture of their finished product inside the factory. It was also observed that there was no facility for electroplating the goods. Statement of Sudhir Pahuja, Manager was recorded in which he stated that the appellants were getting electroplating of the copper wire and chemicals done from outside parties on job work basis and were availing Modvat on the inputs. As the appellants had not obtained permission in terms of Rule 57F(2) for sending the inputs to the job workers, a show cause notice dated

30-6-1989 was issued to them proposing recovery of Modvat credit wrongly utilised during the period 1-4-1986 to 4-8-1987 and further proposing imposition of penalty. In their reply to the show cause notice, the appellants totally denied the allegations, and submitted that the statement of the Manager could not be relied upon as it was neither voluntary nor factual and had been retracted on the next date viz. on 5-8-1987 by a complaint addressed to the Chairman of the CBEC. He further submitted that all the motor vehicle parts manufactured in their factory were being subjected to electroplating process within their licenced premises and all the inputs in respect of which Modvat credit had been taken, had been used in the manufacture of finished products within their factory in which they had installed an electroplating plant which they had purchased in 1986 from M/s. Dynamic Electronics vide bill No. 403, dated 14-5-1986.

The adjudicating authority held that the Manager's statement was admissible in evidence, being true and voluntary in nature, rejected the evidence in the form of invoice of Dynamic Electronics and affidavits of job workers as after-thoughts and confirmed the demand on the ground of non-obtaining of Rule 57F(2) permission and also imposed penalty. Hence, this appeal.

2. Smt. Archana Wadhwa, learned Counsel for the appellants referring to the statement of the Manager, submits that it has been retracted immediately and, therefore, no weightage can be attached thereto. She submits that the crux of the matter is whether Modvat credit can be denied solely on the ground of non-observance of procedural requirement of Rule 57F(2), if otherwise eligible and in this connection she draws our attention to the show cause notice and the order which proceed on the basis that the appellants are not eligible to Modvat solely for this reason. The show cause notice itself indicates that the appellants had been maintaining all registers such as RG 23A Part I and duty paying documents. Learned Counsel submits that the evidence of electroplating in the appellants own premises is available in the shape of invoice of Dynamic Electronics which was enclosed with the reply to the show cause notice along with copies of bills raised by the job workers, M/s. Silver Crown Metal and Processors and it was incumbent upon the Department to verify these documents and satisfy itself about the eligibility of the appellants to Modvat credit instead of which invoices and affidavits

of job workers have been rejected as an after-thought, without any independent verification. In support of the argument that non-application for permission to sent the inputs to job workers as per the requirement of Rule 57F(2) cannot be the basis for disallowing Modvat credit, she relies upon the order of the Tribunal reported in 1990 (46) E.L.T. 395 in the case of Maschmeijer Aromatics (I) Ltd. v. Collector of Central Excise. She further contends that the show cause notice in question is without jurisdiction as there was an earlier show cause notice dated 22-1-1988 regarding the goods seized on 4-8-1987 i.e. on the same date as the Department detected the availment of credit without observance of Rule 57F(2) procedure, and hence the Department could not issue a separate show cause notice nearly 11/12 years after the issue of the first show cause notice as, piecemeal notices are not permissible. Lastly, she submits that the extended period of limitation is not available to the Department as suppression, if any, came to an end on 4-8-1987, i.e. the date when the officers visited the appellants' factory and hence the show cause notice should have been issued within 6 months from that date. She, therefore, prays for setting aside of the duty demand and penalty.

3. Learned DR, Shri Satish Shah contends that the Collector has rightly relied upon the statement of the appellants' Manager which cannot be said to have been retracted as the letter dated 5-8-1987 to the Chairman, CBEC has been issued by the authorised signatory of the appellants and is not a retraction by the Manager. The stand of the appellants that they had their own electroplating machine which they had purchased from Dynamic Electronics has been taken for the first time in the letter dated 25-8-1989 i.e. after a period of over two years and hence has been rightly discarded as a belated piece of evidence. He contends that it is not a case of mere procedural lapse but non-fulfilment of substantive requirement of utilisation of inputs in the manufacture of final products and, therefore, the appellants are not entitled to Modvat credit. In addition he reiterates the findings of the adjudicating authority.

4. We have heard both sides and carefully considered their submissions.

We see great force in the submission of the learned Counsel for the appellants that the Modvat credit cannot be denied for non-fulfilment of procedural

requirement of Rule 57F(2) as has been held in the case of Maschmeijer Aromatics (I) Ltd. (supra). The reference to RG 23A Part I register and duty paying documents in the show cause notice goes a long way in establishing the appellants' contention that the only bone of contention in the present matter is the non-obtaining of permission in terms of Rule 57F(2). So far as the utilisation of the inputs in the final product is concerned the appellants have adduced evidence in the form of the Dynamic Electronics invoice and bills raised by the job workers during the period May 1986 to the end of July 1987 (pages -Annexure G 25 to 40 of the paper book as enclosures to the reply to the show cause notice). However, these have not been considered in the proper perspective by the adjudicating authority. If it can be shown by the appellants that the inputs have been utilised for the finished end-product declared by them then it can be said that substantive compliance has been made for availing Modvat credit. In this view of the matter, we hold that the lower authorities should re-examine the issue to determine whether with reference to the records it can be verified that the inputs which was sent out have been received back after reprocessing and the inputs have been ultimately utilised in the end-product. Subject to such satisfaction, the benefit of Modvat credit should be extended to the appellants, notwithstanding their failure to apply and obtain necessary permission. In the facts and circumstances of the case, we set aside the impugned order and remand the matter to the adjudicating authority for de novo decision in the light of our order above.