

Electronics Ltd. Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-01-1995

Reported in : (1995)(79)ELT170TriDel

Appellant : Electronics Ltd.

Respondent : Collector of C. Excise

Judgement :

1. In view of the issue involved in this stay petition and the connected appeal lying within a narrow compass, we felt like taking up the appeal itself straightaway after granting waiver of pre-deposit as a condition for doing so. We order accordingly on the question of waiver of predeposit and proceed to take up the appeal, which we do with the consent of both sides.

2. We heard Shri C.D. Banga, learned Consultant for the petitioners and Shri Sanjeev Sachdeva, learned SDR for the Revenue.

3. Modvat credit had been disallowed in this case on the ground that the duty paying document did not bear the endorsement in favour of the appellants./manufacturers. We find, however, that the gate pass issued by the supplier of the subject inputs shows the name of the appellants M/s. Electronics Ltd. as the customers. There is another entry captioned "consignee's name and address" showing the name of Indian Aluminium Co. Ltd. A/C Electronics Ltd., Faridabad, Haryana. It was explained by the learned Consultant, Sh. Banga that on the objection being taken by the Department that the gate pass did not have

the required endorsement, they got this also attended to and obtained the required endorsement. We hold that in view of the clear indication of the name and address of the appellants in the Gate Passes, the objection taken by the authorities below that the Gate Passes were not endorsed in their favour at the time of receipt of the goods in their factory is totally untenable. The Deputy Collector has referred in his order-in-original to the clarification contained in the Publication, "Guide to Modvat" issued by the Central Board of Excise and Customs that where the inputs cleared from the originating factory to their branch office/godown are resold by the dealer/agent as such to a manufacturer availing Modvat, a subsidiary Gate.Pass is not necessary and instead Original Gate Pass itself may be endorsed in the name of the actual user who may take credit on the basis of such endorsement.

In this case, the appellants' name and address was shown in the Gate Pass even originally as the customers. Even the consignee's name was also shown as Indian Aluminium Company A/C Electronics Ltd., Faridabad.

This was sufficient indication to connect the goods covered in the Gate Passes with the appellants. There was no need to insist on a fresh endorsement. Such an endorsement would have been necessary only if the name of Indian Aluminium Company was there without showing the name of the appellants. The Collector (Appeals) has stated in his impugned order-in-appeal that credit has been availed on the strength of Gate Passes sent by M/s. Indian Aluminium Company Ltd., Taloja via Indian Aluminium Co. Ltd., Faridabad (Distributors) and that the Gate Passes have thereafter been endorsed exhibiting sale to the appellants and that the instant case turns out to be a case of endorsed Gate Pass. He has then held that Modvat credit had been rightly denied by the adjudicating authority . We find there is nothing in the Rules or in the procedure laid down by the Government that Modvat cannot be granted on an endorsed Gate Pass. As already observed by us, however, this is not a case where even an endorsement was at all called for. In fact it could even be stated that such an endorsement in favour of the appellants was already there when the Gate Passes were originally issued. The Officers had originally found the availment of Modvat credit by the appellants to be in order and rightly so. But once the audit objection was raised, they apparently became shaky and did not stand by their decision but succumbed to the unjustified objection. By

misinterpreting the scope of the Board's instructions already referred to above, the Deputy Collector reversed the credit allowed. To add insult to injury, personal penalty of Rs. 10,000/- was imposed. We set aside the order appealed against and allow the appeal with consequential benefits to the appellants.

4. Before parting with the case, we would like to register our anguish at the quality or rather the lack of it in the decisions that we are called upon to deal with of which the present one is an example may be an extreme one at that, with total lack of perception of the spirit as well as the letter of the law. The narration in the order-in-original that the appellants had contravened Rule 57G(2) as they had taken Modvat Credit on inputs which were not accompanied by the duty paying documents issued/endorsed in their favour is a totally unacceptable proposition. While mistakes and misinterpretations, real or alleged, may be there in the original or the appellate decisions which after all is the *raison d'etre* for higher appellate institutions, one would expect that the decisions are not totally unreasonable and off the mark as in the present case. Such decisions only lead to avoidable increase of appeal work without any benefit to the department. A copy of this order may be sent to the Principal Collector, New Delhi and Member, Central Excise, Central Board of Excise and Customs for their information and appropriate action.

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