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Collector of Central Ex. Vs. Thapsons Steels (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-28-1995

Reported in : (1995)(79)ELT523TriDel

Appellant : Collector of Central Ex.

Respondent : Thapsons Steels (P) Ltd.

Judgement :

1. The Collector of Central Excise, Chandigarh has filed these two reference applications against the final order of this Tribunal. The contents of the two reference applications and the issue addressed by each of them, being identical, they are disposed of by this order.

2. The issue in the appeals before this Tribunal was whether modvat credit could be taken by an assessee on the basis of challans issued by the Steel Authority of India Ltd. or gate passes issued by a manufacturer had been endorsed more than one month. The Collector (Appeals) had noted that there was no dispute that the inputs had paid duty and the only objection to the credit was the number of endorsements on the duty paying document. Applying the ratio of this Tribunal's decision in SBS Organics case (1990 (45) E.L.T. 701) she held that this criteria was not valid for denying the modvat credit.

The appeals against these orders were dismissed by this Tribunal, holding that the number of endorsement was not the deciding factor. It is against this order that these reference applications are filed.

3. The Collector was represented by Shri B.D. Bhagat, JDR in the first application and Shri YR Kilaniya JDR in the second application was not represented at the hearing. Both the D.Rs. reiterated the points in the reference applications. The applicant urged the following points that the instructions relating to limiting the number of endorsements issued by the Central Board of Excise & Customs are issued in pursuance of the powers vested. Firstly that the Central Government had been vested powers under the first proviso under Sub-rule 2 of Rule 57G of the Central Excise Rules to prescribe the document on the basis of which modvat credit can be availed. It is further urged that the Board has issued instructions in its letters, dated 23-1-1989 and 17-4-1989 restricting the number of endorsements on a challan or a gate pass respectively. The applicant further urges "that the instructions issued by the Central Government in terms of rule referred to above are not merely procedural but are mandatory and are to be complied with the concerned assessee as envisaged in the Trade Notice referred to above to avoid any misuse of the facility given to the assessee." 4. On this basis it urges that the reference be made to the High Court as follows :- "Whether the CEGAT can, in exercise of its appellate powers override the instructions issued by the Central Govt. in exercise of its statutory powers delegated to by First proviso to Sub-rule (2) of Rule 57G of the Rules and allow benefit of Modvat credit on the gate passes endorsed more than the permissible limit laid down by the Govt. under the relevant rules and thus allow consequential relief to the assessee to the detriment of the Revenue." 5. I have heard Shri Kulvinder Singh advocate on behalf of M/s Thapsons Steels (P) Ltd. one of the respondents.

6. These applications seek to challenge the jurisdiction of this Tribunal in deciding these issues. The thrust of the applicants is that this Tribunal is bound by the directions of the Board issued in exercise of its statutory powers prescribing the duty paying documents.

As a matter of fact, this Tribunal has not questioned the prescription of the Board with regard to the documents. The documents prescribed as one 'evidencing' payment of duty is the sale challan and the gate pass.

The significance of these quoted words reproduced from the proviso (2) Sub-rule 2 of 56G has to be appreciated. The proviso says, in essence that credit can only be taken on inputs covered by a gate pass R-1, a bill of entry or any other document has been prescribed by the Board evidencing the payment of duty on the inputs. Since the gate passes were already prescribed in the proviso, the question of the Board prescribing it would not arise. The sale challan has been prescribed by the Board as a document evidencing the payment of duty. Now, if the challan and the gate pass continue to be document showing payment of duty even after one or two endorsements, they do not cease to be such duty paying document if further endorsements are put on them. The proviso or the rules elsewhere relating to modvat do not confer upon the Board powers to limit the number of endorsements. Therefore directions issued by the Board with regard to the number of endorsement being duty paying document, either specified in the rule or prescribed under it cannot have been issued in exercise of its statutory powers.

They would therefore be in the nature of administrative instructions.

Therefore orders passed by this Tribunal have only impunged upon the orders issued by the Board in its administrative capacity. It was therefore to be held that the question framed in the applications for reference to the High Court itself does not arise from the orders of this Tribunal.

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