Collector of Central Excise Vs. Bansal Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-24-1995

Reported in : (1995)(78)ELT149TriDel

Appellant : Collector of Central Excise

Respondent : Bansal Industries

Advocate for Def. : Shri. T. Ramesh Ld. Counsel

Judgement :

1. This is a reference application by the Revenue for referring the following alleged question of law said to have arisen out of the Final Order No. A/772/94-NRB, dated 31-8-1994 : "(1) Whether can the MODVAT credit be availed of on the goods which are received without cover of prescribed duty paying documents.

(2) Whether the CEGAT is empowered to treat a document not prescribed under proviso to Sub-rule (2) of Rule 57 of the Central Excise Rules, 1944, as duty paying documents.

(3) Whether the CEGAT is empowered to grant relief which is not envisaged under the statue/Central Excise Rules." 2. When the case was taken up Shri S. Sachdeva, Ld. SDR at the outset submitted that in other cases also similar applications were moved by the Revenue proposing the said questions of law for reference to the High Court concerned but rejected. He produced the photo copy of the Reference Order No. 81-82/94-NRB, dated 29-12-1994. However, he

submitted that what was urged in the said cases on behalf of the Revenue be also treated his arguments in the present case also. In reply Shri T. Ramesh Ld. Counsel for the respondents submitted that the said questions are not questions of law and, therefore, the reference application be rejected.

3. We have considered the submissions. From the Reference Order No.81-82/94-NRB, dated 29-12-1994 we find that identical three questions were proposed for reference to the High Court which were not found referable by the Bench vide its said order. For ready reference relevant paragraph of the said order may be reproduced hereunder : "4. We have considered the submissions. The operative part of the order of the Tribunal under reference has been extracted earlier. It had been held, following the approach taken by the Tribunal in a number of cases as follows :- "We find that this Tribunal has repeatedly observed that a substantial benefit should not be denied for minor procedural infraction and if there were some minor curable defects, it was up to the departmental authorities to get those defects rectified and advise the licencee/assessee suitably or take such other precautions as may be called for in a given situation : and if necessary verify the facts with reference to the records, rules & goods. Since in the present case the appellants have already obtained the necessary endorsements on the original gate passes after obtaining time from the Tribunal for this purpose and have filed the copies thereof, we waive the predeposit of the amounts in question.

Further taking up the main appeals we accept them in view of a catena of orders of this Tribunal on the above points with observation that it will be open to the proper officers concerned to take any further precaution as may be necessary".

In questioning this decision, the Collector has referred to the provisions of Rule 57G(2) of Central Excise Rules, 1944 and contended that a thrice endorsed Gate Pass is not a valid duty paying document for the purpose of the said provision. We do not agree. What the Sub-rule lays down is that no credit shall be taken unless the inputs are received in the factory under the cover of an invoice issued under Rule 52A on AR 1 or Bill of Entry or any other document as may be prescribed by the Central Government evidencing the payment of duty.

The power of the Government to prescribe any document as evidencing payment of duty is in respect of documents other than what has been specifically mentioned in the Rule already, namely, invoice issued under Rule 52A, AR 1 or Bill of Entry. Gate Passes come under the first mentioned item. A Gate Pass mentioning the details relating to the manufactured goods, Tariff item, quantity, duty paid and consignee is the duty paying document. It does not ceases to be such duty paying document if it is endorsed more than twice. The power of the Government is to prescribe any document other than the specified ones and not to restrict or exclude such specified documents in the event of second or subsequent transfer of goods covered thereunder by the concerned transferees/consignees. In the present case, the system of sales and transfer of goods followed by the manufacturers of the inputs M/s.

Indian Petrochemical Industries Corporation Ltd. who are a Central Government undertaking having their depots and consignment agents in different places in the country had been taken into account and the decision in favour of allowing Modvat Credit to the manufacturers (respondents) taken. Any precaution that the departmental authorities would like to take to satisfy themselves about the duty paid nature of the goods in question and their link with the duty paying documents produced was left open in terms of the order. What was decided was to reject the contention of the department that a thrice endorsed Gate Pass ceases to be evidence of the duty paid nature of the goods. A Gate Pass with two endorsements has been permitted to be acceptable as valid document. The additional third endorsement cannot take it out of that category, if the bonafide nature of the endorsements could be gone into by the authorities to satisfy themselves about the validity of the claim within the teams of the Tribunal order. No question of law has arisen in the matter. The questions framed in the application are academic in nature and are self evident. Thus, while the questions whether Modvat credit can be availed of on [duty] paying documents can only elicit the reply that it cannot be; the decision taken is that the documents produced are valid duty paying documents for the reasons discussed. The question posed does not justify a reference.

Similarly the second question would be answered to the effect that CEGAT is not empowered to treat document not prescribed under proviso to Sub-rule (2) of Rule 57 of Central Excise Rules as duty paying documents. The decision, however, was taken on the basis of Gate Passes having been produced, the endorsements therein not affecting their identity as prescribed duty paying documents.

The third question as to whether CEGAT is empowered to grant relief which is not envisaged under the statute/Central Excise Rules does not arise as what was held to be admissible was an envisaged in the statute/Rules." 4. We have ourselves gone through the said order and find in complete agreement with the view taken by the Bench. Consequently, the reference application is rejected as no question of law requiring reference arises in the present case.