Safex Fire Services Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-25-1995

Reported in : (1995)LC576Tri(Mum.)bai

Appellant : Safex Fire Services

Respondent : Commissioner of Central Excise

Judgement :

1. Though this day, only stay application was listed for hearing, after hearing both the sides, since the matter calls for a remand, the appeal itself was taken up for disposal granting waiver of pre-deposit of duty and penalty amounts.

2. The appeal is against the Order-in-Appeal No. NK (962) 327/95, dated 7-7-1995 of the Collector of Central Excise (Appeals), Bombay.

3. The appellants were engaged in the manufacture of fire extinguishers. They were fully exempted upto the end of February 1994.

However, consequent on Budgetary changes of 1994 Budget, they became dutiable effective from 1-3-1994. They were availing Small Scale Exemption upto the end of March 1994. Thereafter, they started paying duty. They filed a declaration for availing Modvat credit on 6-4-1994.

They were reported to be having stock of inputs lying with them on 1-4-1994, in respect of which they took Modvat credit on [1-4-1994] and 5-4-1994 and utilised the same on 14-4-1994. They filed a declaration under Rule 57H on 15-4-1994 claiming the benefit of transitional credit in respect of inputs lying on 1-4-1994. However, the Assistant Collector disallowed the credit of Rs. 44,545/- taken by the appellants on their own, on the ground that the requisite records for establishing stock of inputs were not produced before him and the credit has been taken on their own without filing a declaration. On appeal before the Collector (Appeals), the said order was confirmed. Hence the present appeal before the Tribunal.

4. Shri M.H. Patil, the ld. advocate pleads that as per oral instructions of the officers, they had taken the Form IV account wherein details of all the inputs have been recorded indicating the stock balance as on 1-4-1994. He referred to the Form IV account filed in the Paper Book. However, since the officers were not available, they could not be produced. However, the Assistant Collector has observed that despite telephonic instructions, these documents were not produced. They produced the documents before the Collector (Appeals), who has not taken them into account [the same]. He also pleads that during the relevant period, there is a provision for condonation of delay in filing the application for availing Modvat Credit. Hence the Assistant Collector could have condoned the delay. Moreover, they have filed the declaration as required under Rule 57H on 15-4-1994 and they have all the documents available with them to show the stock position as on 1-4-1994. Hence substantive benefit of Modvat credit cannot be denied to them.

5. Shri H.R. Krishnamurthy, the ld JDR however, contends that they had taken the credit on their own on 1-4-1994 and 5-4-1994 and utilised it on 14-4-1994, whereas they have filed the declaration under Rule 57H only on 15-4-1994. Even the documents required for ascertaining the stock position have not been produced before the Assistant Collector.

Hence the orders of the authorities below do not call for any interference.

6. After hearing both the sides, I find from the copies of the Form IV account produced before me, they indicate the stock position as on 1-4-1994. They also give particulars of the gate passes. It is reported that the original gate passes are available with them. During the relevant period, as per the amended provision of Rule 57G, the Additional Collector is also empowered to condone the delay in

filing the Modvat declaration. Though their action in taking the Modvat Credit on their own without waiting for the credit to be allowed under Rule 57H may invite penal liability, that cannot deny the substantive benefit available under the Modvat scheme, so long as it is established that the stock of inputs was lying on 1-4-1994 and they utilised those inputs in the manufacture of dutiable final product. In the circumstances, I set aside the orders of the authorities below and remand the case back to the Assistant Commissioner of Central Excise, before whom their Form IV account in original alongwith gate passes and other connected documents regarding their use in the manufacture should be produced. The Assistant Commissioner is at liberty to make such verification/investigation on the documents and if the documents are acceptable, Modvat credit on the inputs lying on 1-4-1994 should be allowed to them.

7. Appeal is disposed of by way of remand and hence the stay application does not survive for separate consideration.