

Technical Associates Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-06-1996

Reported in : (1996)(84)ELT347TriDel

Appellant : Technical Associates

Respondent : C.C.E.

Judgement :

1. By the present appeal, the appellants have contested that this disallowance of modvat credit amounting to Rs. 26,138.75 in respect of CRGO Steel coils and further disallowance of duty amounting to Rs. 9,365.25 was wrong. The Department has disallowed the modvat credit on CRGO Steel coils on the ground that no records were maintained so as to correlate the items imported with the items sent to the job workers for conversion into CRGO steel coils. The deemed modvat credit on M.S.Plates has been denied by the Department on the ground that the goods have been described as M.S. Plates in the challans covering the goods whereas deemed modvat credit is available only on sheets of less than 5 mm. thickness. The lower authorities also imposed a personal penalty of Rs. 12,000/- on the appellants.

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of transformers. They imported CRGO steel coils and paid the import duty thereon. They sent the CRGO steel coils to job workers and got back the cores of CRGO. The appellants took credit of Countervailing duty on pro rata basis on the quantity of CRGO steel cores sent to the job workers and that credit was

taken on the date of receipt of cores of CRGO. Similarly, the appellants purchased the goods described as M.S. Plates and took deemed modvat credit on the basis of the challans received. In respect of M.S. Plates, the contention of the appellants was that these goods described as M.S. Plates were actually M.S. Sheets as thickness of the goods was less than 5 mm.

3. The Department rejected the claim of the appellants and the appellants have filed this appeal before the Tribunal.

Paragraph numbers as per certified copy: Editor 4. Shri K.K. Anand, the learned Advocate appearing for the appellants submitted that the appellants had imported CRGO electrical steel in coils and had paid import duty including CVD on the goods. He submitted that the appellants sent these CRGO steel coils to job workers under cover of a challan, the format whereof was prescribed by the Department and received the core CRGO from job workers. He submitted that there is no dispute that core CRGO was not used in the manufacture of transformers.

He also submitted that there is no dispute also that CRGO steel in coils was not used in the manufacture of core CRGO. He submitted that the only dispute is that there is no correlation as contended by the Department. The learned Counsel clarified that CRGO steel in coils was admittedly sent to the job workers and cores CRGO were received from the job workers. He submitted that the second admitted position was that the total quantity of CRGO steel in coils on which modvat credit was taken was not more than CRGO steel in coils sent to job workers and therefore, the question of no correlation as held by the Department does not arise. He therefore, submitted disallowance of modvat credit amounting to Rs. 26,138.75 was not justified.

Paragraph numbers as per certified copy: Editor 3. On the question of taking deemed modvat credit on the goods described as M.S. Plates, the learned counsel submitted that the supplier of these items had issued a certificate that the goods described as M.S. Plates, the thickness thereof was below 5 mm. He submitted that no doubt, the goods were wrongly described as M.S. Plates, they should have been described as M.S. Sheets. But in view of the thickness of the material, the

goods were not plates but were sheets. He therefore, submitted that disallowance of deemed modvat credit amounting to Rs. 9,365.25 was illegal.

4. He submitted that in view of the total quantum of disallowance of duty being only Rs. 35,000/, the penalty quantum of Rs. 12,000/- was on the higher side. In respect of his contention that inputs sent out to job workers if received back after reprocessing, ultimately utilised in end product and modvat credit cannot be denied on the ground that permission in terms of Rule 57F(2) was not taken.

5. Shri Mewa Singh, the learned SDR appearing for the respondent submitted that there is a procedure laid down in the Rules for availing the benefit under Rule 57F; that this Rule requires the maintenance of accounts; that the admitted position was that no accounts except challans were maintained by the appellants; that in the absence of proper accounts, correlation was not possible and that the lower authorities have rightly disallowed modvat credit. On the question of deemed modvat credit on the goods described as M.S. Plates, the learned SDR submitted that no deemed modvat credit is available on plates; that plates and sheets have different connotation in the Tariff; that thickness is the deciding factor; that thickness of the goods was not mentioned in the challans. Reiterating the findings of the lower authorities, the learned SDR submitted that modvat credit has rightly been denied to the appellants and the penalty was justified.

6. Heard the submissions of both sides. I find that CRGO steel in coils was imported by the appellants and CVD was paid on the CRGO coils. No evidence has been brought on record to show that CRGO coils were not utilised in the manufacture of cores CRGO by the job workers. No evidence has also been brought on record to prove that the quantity of CRGO coils on which credit of duty was taken was more than the quantity imported. I also observe that modvat credit of duty was not taken on the entire quantity of CRGO electrical steel in coils. I also observe that the appellants were issuing challans and in the challans there was specific mention that CRGO steel was being sent to the job workers and cores CRGO were being received. Having regard to the above discussions and submissions made before me, I hold that denial of modvat credit amounting to Rs. 26,138.75 was not justified. This finding also finds support from this Tribunal's

decision in the case of Rollax Applied Components v. CCE reported in 1995 (75) E.L.T. 109.

7. On the question of denial of deemed modvat credit on the goods described as M.S. Plates, I find that the only evidence produced by the appellants is a letter from the supplier . As against this, I find that the tariff described the sheets and plates separately. For the purpose of classification, thickness is the criterion for describing the product as sheets or plates; these goods described as M.S. Plates were received under the cover of a challan. In the challan, the thickness was not indicated. Having regard to the fact that the Tariff described the goods differently as also to the fact that the challan covering the goods described as M.S. Plates did not mention the thickness, I hold that the Department has rightly denied the modvat credit amounting to Rs. 9,365.25.

8. On the question of imposition of penalty of Rs. 12,000/-, I find that under Rule 57F(2), the maintenance of the records is a must. I also find that permissions was required to be taken from the Asstt.

Collector for availing of the procedure. These things were not done. I therefore, do not see any reason to interfere with the imposition of penalty or the quantum thereof. In this view of the matter, the impugned order in respect of penalty is upheld.9. But for the above modification, the impugned order is upheld and the appeal is disposed of accordingly.

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