

Cce Vs. Eros Pharma (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Feb-13-1996

Reported in : (1996)(64)LC564Tri(Bang.)alore

Judge : G T V.P.

Appellant : Cce

Respondent : Eros Pharma (P) Ltd.

Judgement :

1. This appeal has been filed by the Revenue against the order of the Collector of Central Excise (Appeals), Bangalore. Under the impugned order, the learned Collector has allowed the benefit of Modvat Credit to the Respondents based on the invoices which had been endorsed by the dealer. The Revenue has urged the following grounds in the grounds of appeal: (i) Commissioner of Customs & Central Excise (Appeals), Bangalore has erred in allowing Modvat Credit on the strength of endorsed invoices.

(ii) Commissioner of Customs & Central Excise (Appeals), Bangalore has failed to appreciate that endorsed invoices are not the documents prescribed by the Central Board of Excise & Customs for the purpose of availment of Modvat Credit. Hence the assessee is not entitled to take Modvat Credit on endorsed invoices.

On a careful consideration of the record of the case and the submission of the appellants, I find that it is a fact that the Board's circular No. 53/86 CX. 6 dated

5.12.1986 permits in respect proforma credit, endorsement of G. Ps by the first consignee to another, if he purchases the entire consignment in original packed condition. Subsequently, Board's circular No. 14/89 dated 17.4.1989 permitted the second endorsement also. This obviously applies mutatis mutandis to the Modvat credit scheme also. Incidentally, it is observed that the Hon'ble Tribunal in the case of Collector v. Goodlass Nerolac Paints ruled that the manufacturer is not required to be shown as consignee of the inputs in G.P. 1 - no endorsement is required on the reverse of the G.P. I or subsidiary G.P., because the rules do not stipulate such a condition. Such a provision is only provided by the Board's circular/trade notice, which as well settled, are not enforceable in law. The ratio of the Hon'ble Tribunal's ruling is aptly applicable to the facts of the present case.

2. The learned JDR for the Department pleaded that Rule 57G, among other conditions, stipulates that no credit shall be taken unless the inputs are received in the factory under the cover of an invoice issued under Rule 52A, and A.R. 1 or a triplicate copy of the Bill of Entry or any other document as may be prescribed by the Central Government by notifying in the official Gazette evidencing payment of duty on the inputs received. He has pleaded that the invoices issued under Rule 52A is the one under which the goods are actually removed from the factory of the manufacturer and in the present case the goods were removed to a dealer's factory. In a situation when the inputs are received from a dealer who are registered for the purpose, they are authorised to issue their invoices in terms of Rule 57GG. In the present case the goods came to be sold by the dealer on the invoice of the manufacturer who had endorsed the same. He has pleaded that rules clearly provided that no credit shall be taken unless the invoice issued is under Rule 52A in case the goods directly moved from the manufacturer to the factory where the Modvat Credit is being taken or they should be received under the cover of invoice under Rule 57GG. He has pleaded that there was no instruction at the relevant time that the Modvat Credit should be allowed based on the endorsed invoices. He has pleaded that the gate pass was the required document prior to the amendment of Rule 57G by which the requirement of gate pass was dispensed with and the particulars in this regard were incorporated in the invoice itself. He has pleaded that in the absence of any notification allowing Modvat Credit on endorsed invoices, the appellant could not take the Modvat

credit on the endorsed invoices. At this stage, on a query from the Bench, the learned JDR informed that in that transitory period, Gate Passes which are issued prior to 31.3.1994 were allowed to be accepted even if endorsed upto 30th June, 1994 as per Notification No. 16/94. He has pleaded, for acceptance of the endorsed invoices however no specific notification was issued and going by the strict interpretation of law endorsed invoices could not be accepted. The learned JDR before conclusion of his argument pleaded that the whole consignment as such was sent by the manufacturer was endorsed by the dealer to the assessee.

3. The Respondents have sought for decision of the appeal based on records and also based on their submissions in their Paper Book. They in their submissions before the Collector (Appeals) in the grounds of appeal have urged as under: (c) Rule 57G(2) stipulates that credit can be taken only if the inputs are received under the cover of an Invoice, an AR-1, Bill of Entry etc. evidencing the payment of duty of the inputs. Neither this Rule nor any of other Central Excise Rule requires that the duty paying document should be made only in the name of the manufacturer using the inputs. All that is required according to both the spirit and the letter of the Rule is that the document should evidence the payment of duty on the input. Indeed, as held by the CEGAT in Collector v. Goodlass Nerolac Paints - not only is it not necessary for the duty paying document to show the manufacturer as the Consignee, even the endorsement in favour of the manufacturer is not required. Hence the disallowance of Modvat credit from endorsed invoices has no legal sanction.

4. I have considered the pleas made by both the sides. It is observed that the learned lower authority has in his order held that the Board in the case of Gate Pass has allowed endorsements twice on the Gate Passes for the purpose of Modvat Credit under Rule 57G. The issue here is whether the endorsed invoices issued by the manufacturer of the goods which has been received by the appellants through the agency of a dealer can be accepted as a document for the purpose of taking Modvat Credit. Earlier the goods were required to be cleared under the Gate Passes from a manufacturer's factory and this position came to be changed with effect from 1.4.1994 when a composite invoice was prescribed as the Central Excise document under which the goods are required to be cleared

from the factory in place of the Gate Pass.

Earlier, by issue of a Notification under Rule 57G, the Board had authorised taking of Modvat Credit on endorsed Gate Passes where the goods did not come directly from the manufacturer to the assessee for claiming the benefit of Modvat Credit. This instruction, with the change of the documentation prescribed, i.e. Invoice in place of Gate Pass, was not made applicable specifically in respect of the goods cleared under the cover of Invoices. The plea of the Revenue is that inasmuch as no instructions under Rule 57G for acceptance of endorsed invoice had been issued, the learned lower authority should not have allowed the benefit of Modvat Credit on the strength of this endorsed invoice. The learned lower authority, it is seen, has not examined the issue indepth in the context of the changed provisions of law under which the Modvat Credit has been authorised to be taken when the goods are received under the cover of the invoice issued by the manufacturer.

At the same time by issue of Notification 15/94, a facility has also been provided for taking Modvat credit in case the goods were not received directly from the manufacturer but through the agency of the whole-sale dealer and distributor. In that event it has been set out in the notification that Modvat credit should be taken based on the invoices issued by the wholesale distributor or dealer which indicates the particulars as set out in this notification. This notification, for convenience of reference, is reproduced below: Modvat--Particulars to be indicated in the invoice Held on page 6.108 of Central Excise Manual 1994-95] In exercise of the powers conferred by Rule 57G of the Central Excise Rules, 1944, the Central Government hereby prescribes the invoice issued by-- (ii) wholesale distributor/dealer of a manufacturer who has bought the excisable goods either from the manufacturer at the factory or from the manufacturer's depot; or (a) the rate and the amount of duty, both in words and figures, and such other particulars as may be prescribed by the Collector or as the case may be, Central Board of Excise & Customs; (b) details of serial number and date of, and quantity of inputs mentioned in, the invoice issued under Rule 52A or as the case may be Bill of Entry, and (c) if issued by the wholesale distributor/dealer, the serial number and date of the invoice issued by the manufacturer to the dealer, It is seen that in a contingency where the goods were received not directly from the manufacturer but through the agency of

the dealer, facility for taking Modvat was taken care of by authorising the taking of Modvat Credit based on the invoice to be issued by the wholesale dealer, distributor etc. and for that reason it would appear the Government did not feel it necessary to issue any notification for acceptance of the endorsed invoices as was the case in case of Gate Passes. Even in the case of Gate Passes, a provision was earlier made for acceptance of subsidiary gate passes also. Thus, simultaneously the provision of acceptance of subsidiary gate passes and also endorsed gate passes was available. It is seen that at the time when the change over took place in the Central Excise documentation as above, there was some confusion and some hardship and the Government issued Notification No. 16/94 dated 30th March, 1994 under which the endorsed Gate Pass, Subsidiary Gate Pass and certain certificates were notified as authorised documents for taking Modvat Credit till 30th June, 1994. It would thus appear that upto 30th June, 1994 this facility of accepting endorsed Gate Pass was available along with the amended provisions in regard to taking of Modvat Credit based on the invoices issued by the manufacturer or by the dealer. In the present case what has happened is that the full consignment as received by the dealer has been sent to the Respondents and the dealer has not issued any invoice of his own but has made an endorsement for the sale of the goods to the Respondents and sent the goods under the cover of this endorsed invoice. The question that arises is that whether in the circumstances which prevailed at the relevant time such a course was acceptable. It is observed that at the relevant time the dealers were not required to register while they were authorised to issue invoices as would be seen from Notification No. 15/94. In the present case what has happened is that instead of the dealer issuing the invoice, he has made the endorsement in the invoice in respect of the code he has received from the manufacturer. It is in the above context that the matter should have been examined by the learned lower authority. The learned lower authority does not appear to have examined the whole issue in depth and has held that the endorsements made later in the Gate Passes was adequate enough to give cover to the appellants for the purpose of Modvat credit. This, I am afraid, is not the correct way to look at things with the change of law and with the changed parameters and facilities which had been made available at the relevant time. The position should have been examined in the context of the same.

This having not been done, I hold that the order of the learned lower authority is not proper and therefore set aside the same and remand the matter for de novo consideration of the factors set out above and after affording the Respondents an opportunity of being heard. The appeal is therefore allowed by remand.

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