Control Switch Gear Co. Ltd. Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-18-1996

Reported in : (1996)(86)ELT491TriDel

Appellant : Control Switch Gear Co. Ltd.

Respondent : Collector of C. Excise

Judgement :

1. The appellant received a consignment of electric conductors, an input used by appellant which were sent to him by manufacturer. It appears that the original gate pass was lost and when the goods reached to the appellant there was no gate pass. It further appears that the appellant did not take the goods into its factory but obtained a certified copy of the gate pass on the basis of which it took credit.

On 1-2-1990 Sub-rule (iv) of Rule 57G was amended. The result of the amendment was to provide that the manufacturer must submit to the department the original documents evidencing payment of duty while submitting monthly return. The appellant had taken credit on the basis of the copy of the gate pass claiming that it was permitted to do so in terms of Circular No. 44/86, dated 29-10-1986. The Assistant Collector was of the view that consequent to the amendment of the rule the circular would no longer have validity and passed orders (which have been confirmed by Collector Appeals) denying credit; hence this appeal.

2. The representative for the appellant argues that the circular continued to be in force when credit was taken and was only withdrawn in 1992. Therefore credit has

been correctly taken. He places reliance on the decision of this Tribunal in the case reported in 1995 (11) RLT 3. The Departmental Representative argues that once the provision of law had changed, the circular which was issued on the basis of earlier provision of law would automatically ceased for relevance.

4. Prior to its amendment, Sub-clause (iv) of Rule 57G did not require the assessee to produce a original duty paying document. It only provided that on demand by the officer such a document must be provided. It would follow from this that with the monthly return it was not necessary to submit the original document. Subsequent to the amendment it was essential that in any case where credit was taken the original document evidencing payment of duty must be produced. The return is to be filed in the month subsequent to the month in which credit is taken. Therefore wherever credit is taken the original document on the basis of which credit was taken should be in the possession of the assessee. If that were not the case one would have to assume that situation whether credit taken is only on the original document.

5. The other argument of the advocate is that the certificate itself is in the nature of an original document which has been prescribed by the Board. The advocate was only able to show the photocopy of the document on which credit was taken and I cannot therefore permit that was not itself a certificate. We have to see whether it is covered by instructions of the Board. The Board has in its circular made applicable to Modvat credit instructions issued by it on 30-11-1992 relating to taking of credit under Rule 56A. In the decision relied upon by the appellants representative the Bench had held that Modvat credit should be taken on the basis of photocopy of the gate pass when the original is lost and cited the Board's circular in support. The decision relied upon by the Departmental Representative a contrary view is taken, that since any number of photocopies could be issued by Superintendent and more asked credit could be taken on the basis of additional photocopy. Though there appears to be a conflict between two decisions that is not actually the case. The Western Bench in its decision cited by the Departmental Representative had noted that there was a specific provision for issue of a document to take credit when the original gate pass was lost. The circular requires that the Superintendent should be asked to produce a copy of the gate pass duly

certified by the range Superintendent in charge of the factory. Credit should normally be allowed on production of such certified copy. The use of the underlined words is significant. What the circular contemplates in my view is that the manufacturer who issued the gate pass should ask the Superintendent to issue a copy of the gate pass to certify that it has been issued in lieu of the gate pass which has been lost for the purpose of taking credit. If this were not the case and the Superintendent merely issue a attested copy of the gate pass the conclusion in the decision could result that credit could be taken any number of times. The situation would be different where the Superintendent conciously authenticated a copy of the gate pass for the specific purpose for enabling the recipient of the goods to take credit. It is not the claim of the assessee that a proper request as described above was made or that the copy of the gate pass on which credit was taken was issued in pursuance of the circular of the Board.

That being the case that this copy cannot be considered to be a gate pass 'duly certified' by range Superintendent as provided in circular.

Credit could not have been taken on the basis of this gate pass.