Collector of Central Excise Vs. Sudesh Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-04-1996

Reported in : (1996)(85)ELT296TriDel

Appellant : Collector of Central Excise

Respondent : Sudesh Industries

Judgement :

1. This appeal by the Revenue is directed against the impugned Order-in-Appeal whereby the Collector (Appeals) held that the respondents were entitled for the Modvat credit.

2. Brief facts of the case are that the respondents are engaged in the manufacture of Ring Forging, namely, Bearing Forging falling under Heading No. 7326 and availed the benefit of Modvat credit during the period 6/1992 to 8/1992 on the inputs namely Bars and Rods of other alloy steels. Since the same were not declared in the declaration filed by the respondents on 9-4-1991 in terms of Rule 57G of the Central Excise Rules, 1944, a show cause notice was issued to them to show cause as to why they should not be asked to reverse the said Modvat credit and after usual adjudication proceedings, the Assistant Collector directed the respondents to reverse the Modvat credit holding that the inputs were not declared in the declaration. Against that order of the Assistant Collector the respondents filed an appeal before the Collector (Appeals) who by the impugned Order-in-Appeal set aside the order of the Assistant Collector holding that minor technical lapse in declaring the inputs in the declaration is condonable and for this

proposition relied upon the Tribunal's decision reported in 1993 (64) E.L.T. 332. Hence the present appeal by the Revenue.

3. Appearing on behalf of the Revenue-appellant, Shri R.A. Shaikh, JDR submitted that under Rule 57G the declaration should, inter alia, contain specific mention of inputs. The reference to input should not be merely by implication. In the instant case the respondents in their declaration dated 9-4-1991 have not fulfilled the requirement of the law by declaring it as Alloy Steel Strips and it is only by implication that the heading - sub-heading 7228.20 covers only Bars and Rods and not Strips and, therefore, the non-mentioning of inputs specifically in the declaration is not a condonable lapse and cited the cases reported in 1988 (38) E.L.T. 332; 1992 (60) E.L.T. 271 and 1992 (62) E.L.T. 547.

4. Appearing on behalf of the respondent, Shri T.R. Tandon, Learned Consultant supported the impugned order and cited the case of J.K.Industries v. Collector of Central Excise, Jaipur, 1995 (79) E.L.T.335, wherein it was held that general description of inputs given in the declaration entitles the assessee for Modvat credit.

5. Considered. From the impugned Order-in-Original I find that the adjudicating authority denied the Modvat credit as the supplier of inputs mentioned wrong heading in Gate Passes and further that the respondents declared in the declaration "strips" as inputs and not "Bars and Rods" of other steels. In the Memorandum of Appeal it has not been disputed that 'Bars and Rods' were used as inputs and the only ground taken in the Memorandum of Appeal is that the respondents did not specifically mention Bars and Rods in their declaration. The Collector (Appeals) held that the said error is a minor technical lapse which is condonable. For ease of ready reference his findings may be reproduced as under : "I have gone through the appeal records, the submissions contained in the memorandum of appeal as well as the arguments tendered by Shri T.R. Tandon during the course of personal hearing. I have observed in this appeal that the adjudicating authority has denied the Modvat credit as the supplier of inputs mentioned the wrong heading in Gate Passes. The appellant has pointed out that Item 72.28/7228.20 is for 'Bars & Rods' of 'Silico Manganese Steels' and not for

'strips'. By error the word 'strips' was mentioned and contended that error of writing strips against the heading/sub-heading in the declaration should not debar the appellant from the benefit of Modvat credit when on being pointed out the appellant have rectified the same. The learned consultant also referred a case of M/s. Punjab Gas Cylinders, Ludhiana, decided by me vide Order-in-Appeal No. 75/CE/CHD/93, dated 5-2-1993 wherein identical issue was decided and held therein that when the department does not deny that the inputs have been used in the manufacture of final products and also the duty paid character of the inputs on which Modvat credit has been availed is not disputed, to disallow the Modvat credit for mentioning of wrong sub-heading by the supplier in the duty paying documents will tantamount to being harsh. The main heading in the declaration and in the gate pass covering the inputs is the same i.e. 72.28. It is nothing but a minor technical lapse which is condonable. This is supported by the decision of the Hon'ble Tribunal in the case quoted as 1993 (64) E.L.T. 332 Tribunal." I agree with the said finding of the Collector (Appeals). The case law cited by the appellant as aforesaid is distinguishable on facts. In the peculiar circumstances of the case, I hold that the Collector (Appeals) rightly treated the said mistake as a technical lapse which is condonable.