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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-19-1996

Reported in : (1996)(88)ELT71TriDel

Appellant : Shiv Industries

Respondent : Commissioner of Central Excise

Judgement :

1. Being aggrieved by the order of Commissioner, Central Excise, the appellants have filed the present appeal. The Commissioner in his order had held that credit of duty under Modvat scheme amounting to Rs. 24,785/- was wrongly taken by the appellants. The Commissioner, therefore, ordered the recovery of this amount under Rule 57-I of the Central Excise Rules, 1944. A personal penalty of Rs. 5,000/- was also imposed on the appellants.

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of tractor parts. They procured a number of items for manufacture of these parts on the items procuring from outside, the appellants were availing credit of duty under Modvat scheme on the inputs. The Department alleged that during the year 1992-93, the appellants had taken Modvat credit of Rs. 1,46,788/- and cleared 12,588 nos. of tractor parts. Duty on 10,084 nos. was paid on GPI where as 2,504 nos. were cleared without payment of duty under Notification No.239/86. The appellants were issued show-cause notice asking them to explain as to why duty amounting to Rs. 24,785/- taken and availed as Modvat credit on the inputs used for manufacture of goods cleared as exempted should not be recovered from

them and why penalty should not be imposed on them. The appellants were also asked to explain as to why the extended period of demand should not be invoked in their case. The Commissioner after due process of law held that duty amounting to Rs. 24,785/- was recoverable from the appellants under the extended period of Section 11 A. The Commissioner also imposed a personal penalty.

3. Ms. Guinny Bedi, the learned Advocate appearing for the appellants submitted that the appellants have been recording entry of inputs in RG-23A Part I register; that under column 12, 13, 14 & 15, a general remark was recorded reading as non-duty goods (Modvat credit not availed). The learned Counsel referred to RG-23A Part-I register, specifically entry Nos. 53 and 55 in support of her contention that the remark appeared in RG-23A Part I register. The learned Counsel submitted that in terms of these remarks, no entry was made in RG-23A Part-II which clearly shows that no Modvat credit was taken on these inputs. The learned Counsel also submitted that the appellants had furnished RT-12 returns for the relevant period which have been finally assessed without any query by the Central Excise Authorities. She therefore, submitted that even on limitation, there was no suppression of facts and therefore, the longer period beyond six months cannot be extended. The learned Counsel submitted that the demand is for the period 1992-93 whereas the show-cause notice has been issued on 14-12-1994. The learned Counsel therefore, points out that Modvat credit recovery is intended to be made by invoking the extended period.

Elaborating her arguments, the learned Counsel submitted that as a clarificatory note the appellants by their letter dated 5-8-1993 informed the Superintendent of Central Excise that they were not claiming any Modvat credit on the inputs used for goods cleared by them without payment of duty. The learned Counsel submitted that there was no case made out either on merits or on limitation by the Department.

The learned Counsel therefore, prayed that the impugned order may be set aside and the appeal be allowed.

4. Shri Ramsaran, the learned DR appearing for the respondents submitted that the Counsel for the appellants referred to the final assessment of RT-12 return. He

submitted that on RT-12 returns, there was no indication that no Modvat credit was taken on the inputs used in the manufacture of the final products cleared at nil rate of duty under Notification No. 239/86-C.E. He submitted that the remarks in the form RG-23A Part-I register are not clear to show that no Modvat credit was taken in respect of goods cleared at nil rate of duty. He submitted that when consolidated RG-23A Part-I register was being maintained it was necessary for the appellants to clearly indicate as to which goods were being used as inputs what was the quantum of duty on such goods and how the quantity of such goods was related to the quantity of the total inputs used in the manufacture of the entire quantity of tractor parts. The learned DR also submitted that there is no indication in the papers that these inputs were actually used in the manufacture of exempted goods. On the question of invoking longer period, the learned DR submitted that show-cause notice alleges suppression and mis-statement. He submits that during the material period, no intimation was submitted by the appellants indicating that credit of duty under the Modvat scheme was not taken on the inputs used in the manufacture of the final products and cleared at nil rate of duty under Notification No. 239/86-C.E. The learned DR concluded his arguments by saying that neither on merits nor on limitation the appellants have been able to make out a case and thus prayed that the impugned order may be upheld and the appeal be rejected.

5. Heard the submissions of sides and perused the records. The admitted position is that the tractor parts were being cleared by the appellants partly on payment of duty and partly at nil rate of duty under Notification No. 239/86-C.E. However, the admitted position is that no separate RG-23A Part-I register was being maintained by the appellants.

It was only a consolidated RG-23A Part-I register which was being maintained. I find that there were no adequate remarks in RG-23A Part-I register which indicated that the inputs against which these remarks were recorded were being used in the manufacture of tractor parts which were to be cleared without payment of duty under Notification No.[239/86-C.E.] A scrutiny of these remarks indicate that these inputs were for non-duty goods and also that Modvat credit not taken. However, in the absence of such separate register, it is not clear as to how these goods were being segregated and were being used only in the manufacture of

tractor parts being cleared at nil rate of duty under Notification No. 239/86-C.E. I find that Rule 57C of the Central Excise Rules, 1944 clearly says that no Modvat credit can be taken on the inputs if the final product is exempt. In the instant case though some remarks were being recorded in RG-23A Part-I only, however, how these goods were being correlated with the final product which was exempt is not clear from the returns and records. There is also no declaration given in RT-12 return indicating that no Modvat credit was taken in respect of the inputs 'used in or in relation' to the manufacture of the exempted goods. The appellants have not explained as to how the quantities against which some remarks were recorded was sufficient to manufacture that quantity of finished goods which were cleared at nil rate of duty under Notification No. 239/86-C.E. I also find that the Larger Bench of this Tribunal in the case of Kirloskar Oil Engines Ltd. v. CCE, Pune reported in 1994 (73) E.L.T. 835 held that in case some final product is partly cleared on payment of duty and partly cleared at nil rate of duty under a particular notification then the duty on the inputs used in or in relation to the manufacture of the final product cleared at nil rate of duty shall have to be reversed. I find that the circumstances and the facts in the instant case are similar to the facts and circumstances decided by the Larger Bench of this Tribunal. I do no see any reason to disagree with that decision. In this view of the matter, I uphold the order of recovery of duty amounting to Rs. 24,785/-.

6. It was also agitated before me that the extended period shall not be applicable in the instant case. The learned Counsel for the appellants relied on the remarks recorded in RG-23A Part-I register. A scrutiny of these remarks, however, does not indicate clearly that the items were being used as inputs in the manufacture of the final product which was exempt and therefore, no Modvat credit was being taken. The learned Counsel also referred to the letter dated 5-8-1993 but this letter does not give any support to the appellants case inasmuch as this letter has been written much beyond the relevant period. Thus on limitation also the appellants have not been to make out a case in their favour.

Therefore, even on the issue of the extended period, I uphold the order of Commissioner.

7. Having regard to the above findings uphold the impugned and reject the appeal.

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