

**Ankit Steels Vs. Cce, Raipur**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-02-2012

**Judge :** The Honourable Mr Justice Mathew John, Member (Technical)

**Appeal No. :** Excise Appeal No.4953 of 2004

**Appellant :** Ankit Steels

**Respondent :** Cce, Raipur

**Advocate for Pet/Ap. :** For the Appellant: None. For the Respondent: R.K. Gupta, A.R.

**Judgement :**

**Per Mathew John:**

1. When the matter was called none appeared for the Appellant. Therefore record was perused and the Authorized Representative of Revenue was heard.
2. The appeal came up on a few occasions but was adjourned. On the last occasion namely on 18-11-11 nobody turned up. Today also none is present.
3. The dispute in this appeal is relating to Modvat credit taken by the appellants during the period June 1996 for an amount of Rs. 69409/-
4. The appellants were manufacturing M. S. Ribbed Bars, M. S. Rounds and M. S. Flats falling under chapter 72 and 73 of the Central Excise Tariff. They had availed

Cenvat credit on mis-rolls falling under sub-heading 7216.10 of CETA 1985 during Sep 1996.

5. Rule 57G, as was in force at the relevant period, required that an assessee should declare the description of goods indicating classification thereof before taking credit on inputs to be used for manufacture of final product. The Appellant had filed such declaration indicating defective angles falling under 7216.90 as input but had not declared mis-rolls falling under heading 7216.10 in the said declaration. The declaration in respect of mis-rolls falling under 7216.10 was filed by them only on 15-10-96. So the case of the department is that credit on such items could not have been taken during June 96 on those items. A Show cause Notice issued to recover such credit amounting to Rs.69,409/- and proposing penalty was adjudicated confirming the demand and imposing penalty of Rs. 10,000/-. The appellants did not get any relief in the appeal filed before the Commissioner (Appeal). Aggrieved by the order of the Commissioner (Appeal) Appellants have filed this appeal.

6. The appellants rely on the following decisions of the Tribunal for their claim:

- (i) J. S. Auto parts (P) Ltd Vs. CCE-2001 (135) ELT 950 (Tri);
- (ii) Horological Components Vs. CCE -2001 (135) ELT 676 (Tri-Del);
- (iii) Larson and Toubro Ltd. Vs. CCE -1994 (53) ECR 595 (T) Aluminium Ind Ltd Vs. CCE-1993 (46) ECR 615 (T).

7. The Ld A. R. for Revenue is relying on the following decisions

- (i) CCE VS. Avis Electronics Pvt. Ltd -2000 (117) ELT 571 (Tri-LB);
- (ii) Webel Tools (India) Ltd Vs. CCE 1995 (79) ELT 127 (Tri);
- (iii) CCE Vs. Kirpal Alloys (P) Ltd 1997 (93) ELT 800 (Tri);
- (iv) Asian Paints Ltd VS. CCE -1197 (93) ELT 198 (Tri)

8. I have considered arguments on both sides, the decisions quoted above and as also the statutory provisions. The Applicable Rules are reproduced below:

RULE 57G. Procedure to be observed by the manufacturer (1) Every manufacturer intending to take credit of the duty paid on inputs under rule 57A, shall file a declaration with the Assistant Commissioner of Central Excise having jurisdiction over his factory, indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products and such other information as the said Assistant Commissioner may require, and obtain a dated acknowledgement of the said declaration.

(2) A manufacturer who has filed a declaration under sub-rule (1) may, after obtaining the acknowledgement aforesaid, take credit of the duty paid on the inputs received by him:

Provided that, -

(i) No credit shall be taken unless the inputs are received in the factory under the cover of a document specified herein below :-

(a) An invoice issued by a manufacturer of inputs under rule 52A or 100E of the said rules;

(b) An invoice issued by the manufacturer of inputs from his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer provided the depot or the premises, as the case may be is registered under rule 174;

“(5) Where a manufacturer was not in a position to make a declaration under sub-rule (1) and makes the declaration subsequently, the Assistant Commissioner may, for reasons to be recorded in writing, condone the delay in filing of such declarations and allow the manufacturer to take credit of the duty already paid on the inputs even though the procedural requirements laid down under this rule have not been complied with :

Provided that such permission may be granted by the [Assistant Commissioner] only when he is satisfied that the

(a) Inputs in respect of which credit of duty is to be allowed were received in the factory not before a period of six months from the date of filing such declaration and not before the date of notification issued under rule 57A;

(b) Amount of duty for which credit is sought have actually been paid on such inputs; and

(c) Inputs have actually been used or are to be used in the manufacture of final products.

9. This is a case where the declaration filed under Rule 57G(1) indicated use of defective angles falling under 7216.90 as input but did not indicate mis-rolls falling under heading 7216.10. The defect in the declaration was sought to be rectified by declaration filed on 15-10-96, four months after availing credit, on goods falling under heading 7216.10. The question whether misrolls would be classifiable under 7216.10 or 7216.90 itself was in doubt. The Assistant Commissioner had powers to condone the delay as per provisions of Rule 57 G(5). Assistant Commissioner chose not to do so. Exercise of this discretion is governed by the proviso in the said sub-rule. The impugned order nowhere shows that the issue was examined with reference to this guideline.

10. This is a matter where the legal provision got liberalised progressively. As is obvious from the decisions quoted by both sides, this is an issue where there have been contradictory decisions. The strict requirement of filing declaration under Rule 57G(1) has been liberalized as the department gained more and more experience in implementing the Modvat Scheme as may be seen from sub-rule 57G(11) introduced with effect from 09-02-1999 and the fact that the declaration itself was done away with in later years. The decision of the Larger Bench in *Avis Electronics Ltd (supra)* is on the issue whether credit could be taken on the basis of original copy of the invoice and without the transporter's copy of invoice which is the duplicate copy. I find no reason to apply this decision to a declaration filed under Rule 57G (1) especially in a situation where the manufacturer sought to

rectify the mistake within four months from taking credit and where the Assistant Commissioner had discretion under Rule 57G(5).

11. It is seen that the Deputy Commissioner has not recorded any reason for not exercising this discretion in this case. If a public authority is given a discretion to do a thing under a Rule and if chooses not to do so he is bound to record reasons for not exercising the discretion. Since this has not been done I find the order of the adjudicating authority is not sustainable.

2. Therefore I set aside the order of the lower authorities and allow the appellants to take the impugned credit.

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