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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-17-1996

Reported in : (1996)(86)ELT536TriDel

Appellant : Bharat Ispat

Respondent : Commissioner of Central Excise

Judgement :

1. This is an appeal against the order of the Commissioner of Central Excise (Appeals), New Delhi dated 30-11-1995.

2. Learned counsel stated that in this case, the appellants had taken Modvat credit on the basis of original copies of invoices as the duplicate had been lost. The Assistant Collector, had however, denied the benefit on the ground that the facility to take credit on the basis of original invoice in case of loss of duplicate has been incorporated as Sub-rule (2A) under Rule 57G only with effect from 20-5-1994 by Notification No. 23/94 whereas the items in question had been received prior to this date. It was her submission that while it is factually correct, at the same time, it is a procedural provision which was clarificatory in nature.

3. The system of taking Modvat credit on the basis of invoice had been introduced with effect from 1-4-1994 and the items in question were received under invoice dated 6-4-1994 and 13-4-1994 when the system was still very new and the transporters and others concerned did not understand its implications. Furthermore, Sub-rule (2A) allows this facility notwithstanding anything contained

in Sub-rule (2A).

Therefore, it is a continuation of the old provision in a slightly modified form and clarifies as to what alternative course could be adopted in case of loss of invoice and therefore, should be deemed to be retrospective in nature.

4. Furthermore, it also provides for allowing this facility subject to the satisfaction of the A.C. Hence, they had offered to give an undertaking to the effect that they will not take modvat credit again on the duplicate if it is subsequently recovered or regained.

5. Learned DR stated that the learned Collector (Appeals) had correctly upheld the order of the A.C. as the Notification 23/94, dated 20-5-1994 was prospective in nature and in terms of Rule 52A read with Rule 57G(2), modvat credit could be taken only on the basis of duplicate invoice with effect from 1-4-1994.

6. Learned counsel stated that in support of her contention that such procedural changes should be deemed to be retrospective in nature, she would like to cite Tribunal's order in the case of National Woollen Mills v.Collector of Customs reported in 1991 (56) E.L.T. 613 (Tribunal).

7. In response to queries of the Bench, learned counsel further stated that the appellants are prepared to file an affidavit and an undertaking to the satisfaction of the A.C.8. Learned DR stated, in response, that he has no objection if the matter is remanded with liberty to the A.C. to fully satisfy himself with reference to other relevant documents or in any other way which may be deemed appropriate to ensure that there is no misuse of the facility.

9. I have considered the above submissions. I feel that the appellants have a strong prima facie case. Therefore, I waive the pre-deposit of the amount in question. Further, as the matter is in a narrow compass, I take up the main appeal itself with the consent of both the sides and take into consideration the submission of both the sides.

10. I observe that the learned counsel is correct in pointing out that Rule 57G is procedural in nature.

11. Further, the main object and purpose of these provisions is to ensure that modvat credit is taken only in respect of duty-paid goods covered by the scheme and there is no misuse of the facility and that is why, apart from prescribing various documents with reference to which the benefit could be availed of and additional condition by way of satisfaction of the A.C. has been incorporated. Moreover, even before these amendments, if the gate pass was lost in transit, it was open to the A.C. to make enquiries and satisfy himself before allowing the credit. What was earlier implied has now been made explicit by introducing Sub-rule (2A). In these circumstances, Sub-rule (2A) can only be considered as clarificatory in nature providing for a procedure which could be deemed to have a retrospective effect.

12. In these circumstances, learned DR has given a very fair offer that it may be left to the A.C. to satisfy himself in the way deemed most appropriate by him. I, therefore, set aside the impugned orders and direct the A.C. to allow the credit subject to his satisfaction whether by way of an affidavit, undertaking, enquiry or otherwise in the manner deemed appropriate by him. With these observations, the appeal is accepted.