Collector of C. Ex. Vs. Didar Steel Complex Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-09-1996

Reported in : (1996)(87)ELT702TriDel

Appellant : Collector of C. Ex.

Respondent : Didar Steel Complex Pvt. Ltd.

Judgement :
1. This appeal has been filed by the Revenue being aggrieved by the order of Collector (Appeals). The Collector (Appeals), in his order dated 7-4-1995 had held: "On going through the facts of the case I hold that the impugned order needs to be set aside entirely. Trade Notice as the word indicates is a notice for the information of the trade. There is no legal or statutory binding factor in it. It is admitted in the impugned order that the trade notice was issued to prevent misuse the facility of Modvat credit. Impugned order does not charge that misuse had taken place. The charge is only of not following the procedure as laid down in the trade notice and therefore, it can best be held that there is a procedural irregularity and for this a substantive right cannot be denied. It is not the department's case that the inputs have not been used in the manufacture of final product, it is not the department's case that the inputs were not received, it is not the department's case that the final product was not duty paid and I therefore, hold that credit availed cannot be denied on procedural irregularity." 2. The facts of the case, in brief, are that the respondents herein are engaged in the manufacture of steel ingots and are availing input credit of duty under Modvat scheme. They were procuring the

defective bloom, rejected slab and the steel ingots for which they had filed a declaration. Trade Notice No. 20/93-C.E., dated 29-10-1993 was issued by the Collector of Central Excise, Chandigarh wherein the party using defective steel ingots and slabs as inputs were required to file a D3 declaration within 24 hours of the receipt of such inputs and melt these inputs in the presence of jurisdictional Superintendent of Central Excise after giving written notice before such melting. The Department alleged that the respondents herein melted the defective blooms, rejected steel slabs and ingots weighing 26.427 MTs. from 11-11-1993 to 18-11-1993 without notifying about their melting to the Superintendent, Central Excise and therefore, they violated the provisions of the said Trade Notice No. 20/93-C.E., dated 29-10-1993 and therefore, alleged that an amount of Rs. 26,427/- taken as Modvat credit on the said inputs is recoverable from them under Section 11A of the CESA, 1944. In reply to the show cause notice, the appellants submitted that a plain reading of the language of the aforesaid Trade Notice it would reveal that no such directions were given for availing Modvat credit under the said Trade Notice on the defective steel ingots; that it was not the case of the Department that ingots alleged to have been used by the party during the material period were not defective; that since the respondents admittedly used the defective steel ingots, the directions contained in the said Trade Notice were not applicable to the respondents case and therefore, contended that the show cause notice was not justified and warranted. After considering the submissions of the respondents herein, the Asstt.

Collector ordered that the respondents herein should reverse back or pay by cash or through PLA Rs. 26,427/- which was wrongly taken as Modvat credit on 26.427 MTs. of raw materials. The Asstt. Collector also imposed a personal penalty of Rs. 8,000/-on the party.

3. Shri Y.R. Kilaniya, the learned DR appearing for the Revenue submitted that the Collector, Central Excise has been vested with power under Rule 233 of the Central Excise Rules to prescribe supplementary instructions for any matter arising out of the rule; that in exercise of the power, Collector, Central Excise, Chandigarh issued instructions circulated under Collectorate Trade Notice No. 20/93-C.E., dated 29-10-1993 and thus the Trade Notice becomes a part of the

rule and since the respondents had violated the requirement of the Trade Notice, therefore, the Asstt. Collector ordered the reversal of the credit taken and had rightly imposed penalty.

4. None appeared for the respondents. Since the issue involved in the appeal was a short one, therefore, it was decided to proceed in the matter in the absence of the respondents herein.

5. Heard the submissions the learned DR, perused the case records. I find that it is a very short point that has been thrown up in the appeal for determination. The point is whether non-observance of the procedure laid down in the Trade Notice issued by the Collector, Central Excise, Chandigarh is a violation of the Rules as claimed by the Department or a violation of the procedure as held by the Collector (Appeals). I find that credit of duty paid on inputs is admissible under Rule 57A. I also find that Rule 57G lays down the procedure for taking credit of duty on the inputs under Modvat scheme. In the instant case, the respondents had filed a declaration stating that the defective goods set out in the declaration as inputs shall be procured and used in the manufacture of ingots. In the Trade Notice issued by the Collector it was clarified that any assessee using defective steel ingots as inputs shall send D3 intimation to the jurisdictional of the Superintendent, Central Excise and also shall intimate the date of melting the defective steel ingots. The admitted position is that in the instant case the respondents admittedly melted the defective steel ingots for manufacture of steel ingots but did not send the intimation to the Superintendent, Central Excise before melting. The question for determination is whether this amounted to breach of rules or breach of procedure. The admitted position is that defective steel ingots were melted and used as input in the manufacture of steel ingots which were the final product of the respondents and thus the respondents were entitled to taking Modvat credit under Rule 57A. It is not the case of the Department that defective steel ingots were not melted and were not used as ingots for steel ingots, therefore, I agree with the findings of the Collector (Appeals) that sending an intimation to the jurisdictional Superintendent was a procedural requirement. Taking Modvat credit on inputs used in or in relation to the manufacture of final product is a substantive right. Since the inputs were admittedly used in the manufacture of final product

therefore, substantive right cannot be denied fox any procedural lapse. In this view of the matter, I do not see any legal infirmity in the order of Collector (Appeals) and uphold the same.