

Netplast Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-15-1996

Reported in : (1996)(87)ELT434TriDel

Appellant : Netplast Limited

Respondent : Collector of Central Excise

Judgement :

1. The appellants have filed this appeal being aggrieved by the Order of Collector (Appeals). The Collector (Appeals), in his order, dated 26-5-1995 upheld the order of Asstt. Collector confirming the demand of Rs. 20,793/-.

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of goods falling under Tariff Items 8714, 8708, 8529 and 8513 of the Central Excise Tariff Act, 1985. The appellants are availing credit facility on the strength of the declaration filed by them under Rule 57G. While checking the RT 12 returns for the month of February, 1994, the Central Excise officers observed that the appellants have availed Modvat credit amounting to Rs. 20,793/- on the basis of photocopy of the Gate Pass No. 0723, dated 25-1-1994. The Department alleged that since the appellants did not have the original duty paying documents, they were not entitled to avail credit of duty paid on inputs under the Modvat scheme in respect of this photocopy of the gate pass. Accordingly, a show cause notice was issued to the appellants, asking them to explain as to why Modvat credit amounting to Rs. 20,793/- should not be disallowed to them and recovered from them under Rule 57-I of the Central Excise Rules, 1944.

3. In reply to the show cause notice, the appellants submitted that they were registered with the Central Excise for manufacture of the items stated above; that they were taking Modvat on the inputs; that they filed the declaration under Rule 57G; that when the consignment was received from the transporters, they did not receive the original copy of the gate pass; they wrote to the supplier in Madras to send the appellants a proof so that credit of duty on the inputs under the Modvat scheme may be taken; that on receipt of the photocopy of the said gate pass, they took Modvat credit; that the supplier of the inputs again sent a photocopy of the said GP1 duly attested by the Supdt., Central Excise. The Asstt. Collector, after considering all the submissions made by the appellants disallowed Modvat credit amounting to Rs. 20,793/- under Rule 57-I of the Central Excise Rules. The appellants filed an appeal before the Collector (Appeals). The Collector (Appeals), upheld the order of the Asstt. Collector. Against this order of the Collector (Appeals), the appellants have come up in appeal before me.

4. Shri G. Trivedi, Advocate appeared for the appellants. While reiterating the submissions made before the Asstt. Collector and Collector (Appeals), he cited and relied upon the judgment of this Tribunal in the case of SBS Organics Pvt. Ltd. reported in 1990 (45) E.L.T. 701 (Tribunal). In support of his contention that Modvat credit cannot be denied in routine or by mechanical approach even if documentation is defective so long as duty has been paid on inputs.

4A. Shri Y.R. Kilaniya, the learned DR appeared for the respondents and submitted that Rule 57G(4) stipulates "A manufacturer of the final products shall submit to Supdt. of the Central Excise the original documents evidencing the payment of duty along with extracts of Parts I and II of Form RG 23A every month and the Supdt., Central Excise shall after verifying their genuineness, deface such documents and return the same to the manufacturer". The learned DR submitted that the decision cited and relied upon by the appellants pertained to the period prior to 1-2-1990 when Sub-rule (4) of Rule 57G reads. "A manufacturer of the final products shall submit a monthly return to the Superintendent of Central Excise indicating the particulars of the inputs received during the month and the amount of duty taken as credit, along with extracts of Parts I and II of Form RG 23A and shall also make available the documents evidencing the payment of duty

on the inputs on demand by the proper officer." The learned DR submitted that this Rule was amended by Notification No. 1/90-C.E. (N.T.), dated 1-2-1990; that with the amendment of this Rule, the requirement was that original documents evidencing the payment of duty should be there, whereas in the earlier Rule under which the Tribunal had decided the issue in the case of SBS Organics did not have the word 'original'. The Id. DR therefore, submitted that the ratio of the decision of the Hon'ble Tribunal in the case of SBS Organics shall not be applicable to the present case as the present case pertains to the year 1994. The Id. DR prayed that in view of the legal position explained above, the order of the lower authorities may be upheld.⁵ Heard the submissions of both sides, perused the evidence on record and the case law cited and relied upon by the appellants. On careful consideration, I find that the admitted position is that the credit of duty on the inputs under the Modvat scheme was taken on the strength of photocopy of the GP1. The appellants could not produce original document as the same was reported to be misplaced/lost. In the circumstances, I shall have to examine as to what the legal position and the case law on the subject was I find that the case law cited and relied upon by the appellants pertains to the period prior to 1-2-1990.

I also observe that Sub-rule (4) of Rule 57G was amended w.e.f.

1-2-1990. I also find that in the original rule prior to 1-2-1990, the word 'original' was not there whereas in the amended rule effective from 1-2-1990, the word 'original' was added. Thus in terms of the legal position, the original documents were required to be sent along with RT 12 return. In the instant case, the entry in RG 23A Part II, and RT 12 return was supported only by photocopy of the GP 1 since the originals were not there, therefore, they were not legally entitled to taking credit of duty paid on the inputs under the Modvat scheme. Now coming to the second issue that is whether the case law cited and relied upon by the appellants was applicable to their case. I find the case-law cited by the appellants is not applicable to the present case because the decision in the case-law cited by them pertains to the year prior to 1-2-1990 and that during that period under Sub-rule (4) of Rule 57G, the word 'original' was not there and therefore, the case-law cited and relied upon by the appellants does not cover the present case.

6. Having regard to the above findings, the impugned order is upheld and the appeal is rejected.

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