

Customs, Excise and Gold Tribunal - Delhi

Commr. Of C. Ex. vs Jew Steels Ltd. on 18 September, 2002

Equivalent citations: 2003 (160) ELT 444 Tri Del

Bench: P Chacko

ORDER P.G. Chacko, Member (J)

1. In these appeals of the Revenue, there is a common issue. The issue is as to whether the deemed Modvat credit taken by the respondents on inputs supplied by various manufacturers working under the Compounded Levy Scheme under Rule 96ZP of the Central Excise Rules, 1944 read with Section 3A of the Central Excise Act is admissible to them as held by the Commissioner (Appeals).

2. Heard both sides.

3. Ld. JDR submits that, after the Commissioner (Appeals) passed the impugned order, certain inquiries were made by the department and it was found that the Central Excise Range Officer having jurisdiction over the input-manufacturers had wrongly certified that appropriate central excise duty had been paid by those manufacturers on the inputs supplied by them to the respondents. The DR submits that, in view of this finding, the deemed credit will not be admissible to the respondents inasmuch as the mandatory condition under Notification No. 58/97-C.E., dated 30-8-97 was not fulfilled by them. Ld. JDR relies on the following decisions of this Tribunal :-

(1) Final Order No. A/811/2002/NB (SM), dated 13-6-2002 in Appeal No. E/1275/2002-NB (SM) [CCE, Chandigarh-I v. Rubicon Steels].

(2) Final Order No. A/970/2002/NB (SM), dated 9-7-2002 in Appeal No. E/1137/2002-NB (SM) [CCE, Chandigarh-I v. Raj Creators].

and submits that, in the instant case, the duty liability has not been shown to have been duly discharged by the input-manufacturers and hence the benefit of deemed Modvat credit under Notification No. 58/97-C.E, cannot be allowed to the assessee.

4. Ld. Advocate for the respondents opposes the above arguments and relies on the following decisions of the Tribunal :-

(1) Delhi Steel Industries v. CCE, Chandigarh [2002 (48) RLT 753] (2) Shivaye Industries v. CCE, Chandigarh [2002 (50) RLT 36] and prays for affirming the order passed by the Commissioner (Appeals) in this case.

5. I have examined the submissions. I find that, on the facts available on record, the Commissioner (Appeals) allowed deemed Modvat credit to the assessee after finding that the jurisdictional Central Excise Range Officers exercising jurisdiction over the input-manufacturers had certified that the duty liability in respect of the inputs had been duly discharged by those manufacturers. The only ground raised in this appeal is that the certificates issued by the Range Officers have been found, on subsequent investigations, to be incorrect. There is no case for the Revenue in these appeals that the

order passed by the Commissioner (Appeals) on the basis of the facts available on record at that time was perverse. Any investigation or other event which might have occurred subsequent to the passing of the impugned order cannot be a ground for challenging that order. If the department has found by subsequent investigation that the input-manufacturers had not fully discharged duty liability and that the certificates issued by the Range Officers were not correct it is up to the department to take appropriate action under the Act. As against the defaulting manufacturers, the department is at liberty to take recovery proceedings and, as against the Range Officers, the department could take punitive action. In any case, the results of subsequent inquiry cannot be accepted as a ground to challenge the order passed by the Commissioner (Appeals). In the absence of any allegation in these appeals that the order passed by the Commissioner (Appeals) is perverse, I have to confirm that order.

6. The focus of the Revenue is on the certificates issued by the Range Officers. As a matter of fact, Notification No. 58/97-C.E. did not provide for availment of deemed Modvat credit on the strength of any certificate issued by the Range Officer having jurisdiction over the input-manufacturer. In Delhi Steel Industries (supra), I have taken a view that, once the Central Government declared in para 2 of the Notification that the duty of excise shall be deemed to have been paid on the inputs supplied directly by the manufacturer thereof working under the Compounded Levy Scheme, there is hardly any need to make a rowing expedition into the question whether the input-manufacturers had in fact discharged duty liability on the inputs. It has been held, in that case, that the condition in para 4 of the Notification is virtually of no significance in the light of the Central Government's declaration contained in para 2 of the notification. I have no information, nor does the DR, that the operation of the decision in Delhi Steel Industries (supra) has been stayed. I, therefore, would follow the view taken in Delhi Steel Industries (supra).

7. For the reasons already recorded, I do not find any infirmity in the order passed by the Commissioner (Appeals). The appeals of the Revenue are, therefore, rejected.