

Customs, Excise and Gold Tribunal - Tamil Nadu

Varadhalakshmi Mills Ltd. vs Cce on 17 March, 2006

Equivalent citations: 2006 (109) ECC 338, 2006 ECR 338 Tri Chennai

Bench: K T P.

ORDER P. Karthikeyan, Member (T)

1. M/s Varadhalakshmi Mills Ltd, took Cenval Credit of Rs 93,8927- on 6.11.02 based on the invoice No. 0237111 dated 13.10.2002 issued by M/s Reliance Industries, Mumbai. The consignee as per the invoice was M/s Selvam Spinners Ltd Coimbatore and the buyer was M/s Sri Nidhi Industries Ltd, Mumbai. The consignee had refused to receive the consignment and the buyer M/s Sri Nidhi Industries approached the Supdt having jurisdiction over the consignee's factory for endorsing the invoice in favour of the present appellants. This was done as the appellants took the goods and the credit. Subsequently, show cause notice was issued proposing to deny Modval Credit to the appellants and to recover Rs 93,892 availed by them, on the strength of the subject invoice to recover the interest due and also to impose penalty under appropriate rules. The show cause notice was issued on the ground that the invoice was not addressed to the assessee, issued by a manufacturer of the goods covered by the invoice and that the assessee had taken credit in violation of the various circulars and trade notices issued by the Board and the Commissioner. The Assistant Commissioner of Central Excise, while adjudicating the case held that as per the Board's Circular No. 96/7/1995-CX dated 13.2.1995 as amended by circular No. 103/14/95-CX dated 22.2.95 in case goods have been consigned directly by the manufacturer to the consignee/end-user under the instructions of the registered person and the end user refuses to receive the goods, then the registered person could approach the Range Supdt having jurisdiction over the original consignee. The Range Supdt on receipt of request from the registered person can divert the consignment to a new destination as requested by the registered person. The duplicate and triplicate copy of the manufacturer's invoice will be endorsed by the Range Supdt showing the new destination. In the instant case, M/s Srinidhi Industries Ltd. had approached the jurisdictional Supdt and got the invoice endorsed in favour of M/s Varadhalakshmi Mills which was in accordance with the above circulars of the CBEC. Accordingly, the Assistant Commissioner had dropped the proceedings in his order in original dated 5.9.2003.

2. While disposing of the appeal filed by the Revenue, against the order of the adjudicating authority, the Commissioner (Appeals) relied on the ratio of the decision in the case of Balmer Lawrie & Co. Ltd. v. CCE reported in 2000 (116) ELT (Tri. LB) and allowed the appeal of the department. In the said case, the Tribunal had held that endorsed invoice could not be held to be a valid document for the purpose of claiming Modvat Credit beyond 1.4.94. The present appeal is against the above order of the Commissioner (Appeals).

3. Shri S.D. Sankaran, learned Consultant for the appellants argued that what the appellants had done was in accordance with the instructions contained in the Circular No. 96/7/1995 CX dated 13.2.95 and No. 103/14/95-CX dated 22.2.95 issued by the Board and that the appellants had availed the credit regularly and in accordance with law.

4. Shri B.L. Meena, learned SDR reiterated the points relied on by the Commissioner (Appeals) to overrule the order of the Adjudicating authority.

5. I have considered the submissions made by both sides. In the instant case, the assessee had taken credit on the basis of a valid document issued under Rule 57G of the Central Excise Rules, 1944. As the original consignee had refused to receive the consignment, the same was diverted to the assessee with the endorsement of the jurisdictional Range Supdt which again was in accordance with the instructions issued by the Board. In this case, there is no risk of the inputs not reaching the assessee availing credit or availing credit of duty not paid or in excess of duty paid on the inputs. In the transactions involved in the instant case, there was no scope for the assessee availing credit on the basis of any bogus documents as apprehended in the case law in the case of *Balmer Lawrie & Co. Ltd. v. CCE*, (supra). In the circumstances, I find that the assessee had availed only the admissible credit as per the instructions of the Board which the Department cannot deny. Accordingly I set aside the impugned order in appeal and allow the appeal.

(Dictated and pronounced in open Court)