

Customs, Excise and Gold Tribunal - Delhi

Arora Soap And Detergents vs Commissioner Of C.Ex. on 5 February, 1999

Equivalent citations: 1999 (65) ECC 107, 1999 ECR 880 Tri Delhi, 1999 (111) ELT 140 Tri Del

ORDER S.K. Bhatnagar, Vice President

1. This is an appeal filed against the order-in-appeal dated 29-10-1996 passed by Commissioner (Appeals), Meerut.

2. Ld. Counsel stated that the appellants are engaged in the manufacture of Detergent Powder and Washing Powder as branded goods for M/s Goramal Hariram Ltd. using their brand name "555" as well as their own brand name. They had also opted for Modvat credit facility and filed necessary declaration under Rule 57G. They received Show Cause Notice No. V(30)D/ 149/95/7875, dated 29-9-1995 alleging that the appellants have wrongly availed Modvat credits on the basis of Invoices issued by unregistered dealers/traders; and such invoices issued by dealers/traders not registered with the department are not valid documents under Rule 57G of Central Excise Rules in view of Notification No. 32/94-C.E. (N.T.), dated 4-7-1994. The supplier of their raw material i.e. M/s Goramal Hariram Ltd. (from whom raw material was being procured for execution of job work) though had applied for their registration through registered post ultimately on 3-12-1994 (their application for registration as a dealer having not been accepted by hand thrice without giving any reason) was not attended to within stipulated period as provided in the Statutory Rule 174 and hence are to be considered as having been registered with the Department from the date of filing of their application i.e. the date of despatch of their application through registered post on 3-12-1994 in terms of Rule 174(9) *ibid*. Since raw materials are transferred by M/s Goramal Hariram Ltd. on their challans to the appellants to manufacture finished goods on their behalf on job work basis, appellants were justified to take Modvat credits on such challans issued by M/s. Goramal Hariram Ltd.

3. The Commissioner of Central Excise (Appeals) has also failed to appreciate the grounds taken in appeal before him.

4. He further stated that under Modvat scheme what the beneficiary is required to do is to apply for the scheme and is supposed to get along with his work. Their view is further supported by Delhi High Court decision in the Civil Writ Petition No. 510 of 1970 in the case of Electronics Limited v. Union of India and Ors. [1981 (8) E.L.T. 496 (Del.)] that Proforma Credit under Rule 56A is admissible from the date of application.

5. He further submitted that Rule 57GG was introduced on 4th July, 1994 and it was a transitional provision and therefore industry did take some time to familiarise itself with the new formalities. A substantive benefit granted by the law cannot be denied merely because of some procedural irregularities though even on that ground it is their contention that there was no procedural irregularity and they had made application within the time indicated in Board's Circular No. 76/76/94-CX. He cited in support of his contention the case of Bengal Safety Ind. v. CCE [1997 (92) E.L.T. 8 (Tribunal)] mentioning that the Tribunal had held that substantial benefit cannot be denied merely on procedural deviation when invoices were issued by the dealer who did not get registered

during the transitional period upto 31-12-1994.

6. Ld. Counsel also pleaded discrimination since another manufacturer M/s Swadeshi Detergent who were also given Registration Certificate in March, 1995 were allowed this benefit.

7. Ld. D.R. reiterated the departmental arguments and submitted that there was no registration certificate before 31st December, 1994 and subsequent Registration will not cure the defect caused by failure to register in the time given. A licence cannot be issued retrospectively. Duty liability cannot be waived even when licences were issued retrospectively and in support of his case he cites the case reported in 1984 (18) E.L.T. 21 (R) 6.

8. I have heard both the sides. I find considerable merit in the plea of the Ld. Counsel that when they had claimed that they applied for registration through Registered letter dated 3-12-1994 if the Asstt. Commissioner had any doubt, nothing prevented him from making enquiry. It has been their contention throughout that they have been trying for registration even before December, 1994 but were not registered by the department and therefore as a last resort they sent application through registered post on 3-12-1994. Grant of registration is not in the hands of the dealer but it is department which has to take action to register them. That subsequently they were registered in May, 1995 it follows that they were eligible to registration in December, 1994 itself. On the contrary in such a circumstance, keeping in view the judgment of the Delhi High Court in case of Electronics Ltd. v. UOI and Ors. (supra) and provisions of Sub-rule (9) of Rule 174 of Central Excise Rules a view can be taken that they could be deemed to have been registered in December itself. In any case, it was a transitional period and, as held by the Tribunal in case of Bengal Safety Ind. v. CCE (supra) which was also a case where dealer could not get registered before 31-12-1994, the Tribunal held that substantial benefit under law cannot be denied merely because of procedural delays. Following the ratio of the above order and in view of the above discussion, the appeal is allowed as already announced in the open court.