

Customs, Excise and Gold Tribunal - Tamil Nadu

Bharat Heavy Electricals Limited vs Commissioner Of Central Excise on 23 December, 1999

Equivalent citations: 1999 (70) ECC 356

Bench: S Peeran, A T V.K.

ORDER S.L. Peeran, Member (J)

1. This appeal arises from Order-in-Appeal No. 44/92(M) dated 8.4.92 passed by Commissioner (Appeals) Madras holding that the delivery challan issued by M/s. Indian Iron & Steel Co. Ltd. (IISCO) is not a valid document for the purpose of availment of Modvat credit, and as a result upheld the lower authority's order denying Modvat credit in the matter.

2. The appellants are a Public Sector Undertaking and they have taken clearance from the Committee of Secretaries.

3. Ld. Counsel for appellants submits that at the time of granting the clearance, the Committee indicated that the appellants have a very good case and that Revenue should not oppose their prayer in the matter. Be that as it may, he submits that even otherwise the Tribunal has taken a consistent view that certificates issued by Public Sector Undertakings has to be considered as duty paying document as held in the case of Devi Dayal & Mahendra Corporation and Anr. v. CCE, Vide Order No. A/927-930/93-NRB dated 17.11.1993. This judgment has since been applied in the case of Ecko Cables (P) Ltd. as reported in 1994 (72) ELT 290 (T). He submits that the present case squarely falls within four corners of these citations as delivery challans were issued by the Public Sector Undertaking namely IISCO which is a subsidiary of SAIL who are PSU.

4. Heard Ld. DR who reiterates the departmental view expressed inasmuch as that delivery challan issued by IISCO cannot be considered as duty paying document in terms of provisions laid down under Section 57G(2) wherein only a CP/AR.1/ Bill of Entry or any other document as prescribed by the CBEC is required to be accepted. He submits that there is no such prescription given by the Board with regard to present documents and hence rejection of credit is justified.

5. In counter, Ld. Advocate submits that there is no dispute with regard to duty paying nature of the inputs and it is only a procedural violation and for such procedural violation substantive benefit of Modvat cannot be denied as is well laid down.

6. On a careful consideration of the submissions, we notice that the Tribunal in the case of Devi Dayal and Mahendra Corporation and Anr. v. CCE and that of Ecko Cables (P) Ltd., have noticed the Trade Notice No. F. 267/17/88-CX.B dated 19.2.1988 and in the light of said trade notice have held that the certificate issued by a PSU is required to be considered as a duty paying document. The relevant portion of the said order at para-3 is extracted herein below:

3. We find that this has been decided in favour of the assessee by Order No. A/927-930/93-NRB, dated 17.11.1993 in the case of Devi Dayal and Mahendra Corporation and Anr. v. CCE, New Delhi, in which the certificate issued by Hindustan Copper Ltd., which is a public sector has been accepted as a duty paying documents in terms of Rule 57G(2). The Tribunal has relied upon the Trade Notice

No. F. 267/17/88-CX B, 19.2.1988 which recognises that the certificates issued by the Public Sector Undertaking/Canalising Agencies like MMTC/STC are duty paying documents. Learned SDR is not correct in his submission that this trade notice of 19.2.1988 is not relevant to the issue in dispute and in fact, it is very germane to the issue and directly covers the case of the appellants. His argument that it is only the certificates issued by MMTC/STC who have been authorised by the Trade Notice to issue certificates for availment of proforma credit (and subsequently extended to Modvat credit) has been explicitly negated in para 6 of the order of the Tribunal (*supra*). To our minds there is no distinction between *Devi Dayal and Mahendra Corporation case* (*supra*), and this appeal. Accordingly following the above ratio, we hold that the appellants are entitled to the benefit of Modvat credit during the period on the basis of the certificates issued by Hindustan Copper Ltd., set aside the impugned order and allow the appeal as already pronounced in open court.

7. On a perusal of the above findings, we are of the considered opinion that the said findings of the Tribunal is clearly applicable to the facts of the present case and on such application, we have to hold that delivery challan issued by PSU namely IISCO to appellants who is also a PSU, is required to be considered as a valid document for the purpose of grant of Modvat credit.

8. In that view of the matter, the impugned order is set aside and appeal allowed with consequential relief as per law.