
(2015) 08 AHC CK 0190

In the Allahabad High Court

Case No : Central Excise Appeal Defective No. 1 of 2005

Commr. of Cus. & C. Ex.

APPELLANT

Vs

Matsushita Television & Audio India Ltd.

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Citation : (2015) 10 ADJ 657 : (2015) 324 ELT 264 : (2015) 35 GSTR 566

Hon'ble Judges : Tarun Agarwala and Surya Prakash Kesarwani, JJ.

Bench : Division Bench

Advocate : A. Mahajan and S. Chopra, Counsel, for the Appellant; A.P. Mathur, Counsel, for the Respondent

Judgement

Surya Prakash Kesarwani, J.—Heard Sri Amit Mahajan, learned counsel for the appellant and Sri A.P. Mathur, learned counsel for the respondent-assessee. The appeal was admitted on the following substantial question of law:

"Whether on the facts and circumstances, the Modvat credit can be taken on the basis of the photostat copy of BOE?"

2. The submission of learned counsel for the appellant is that Modvat credit was wrongly allowed by the impugned order of the Tribunal [2004 (177) E.L.T. 496 (Tribunal)] on the basis of photo copy of the original invoice/triplicate copy of bill of entry. He submits that in view of the provisions of Rule 57G(3) of the Central Excise Rules, 1944 (hereinafter referred to as the Rules), Modvat credit was not admissible to the respondent.

3. Learned counsel for the respondent-assessee submits that there is no dispute that at the time when the goods in question were received in the factory of production, the same were covered by all requisite documents including triplicate copy of a bill of entry but subsequently triplicate copy of the bill of entry was misplaced and, as such, the assessee obtained the exchange control copy of the relevant bill of entry from the bank and produced the same before the central excise authority concerned. The assessee also executed an indemnity bond to the

extent of credit availed. Apart from this the assessee also produced before the concerned central excise authority the copy of invoice dated 29-11-1996, copy of MR No. 1313 showing gate entry No. 798 dated 31-1-1997, photo copy of transporter copy of invoice/chalan No. 2044 dated 28-1-1997, copy of MR No. 220706 dated 30th January, 1997. He submits that neither the receipt of the goods in question in the factory of production under the cover of valid documents is disputed nor it has been disputed by the Central Excise Authorities that the goods have been used for the intended purpose in the factory of production. He, therefore, submits that in the absence of any dispute with regard to the receipt of the goods in the factory for their intended purpose and the duty paid nature, supported by documents as aforementioned, the credit of duty was lawfully allowed by the Tribunal. He further submits that the findings recorded in the impugned order of the Tribunal are findings of fact and, as such, no substantial question of law arise.

4. We have carefully considered the submissions of learned counsel for the parties.

5. Briefly stated the facts of the present case are that undisputedly the petitioner received certain duty paid goods in his factory for intended purpose covered by all the relevant documents including the documents as provided in clause (c) of sub-rule (3) of Rule 57G. However, subsequently, Triplicate copy of the relevant bill of entry was misplaced. Under the circumstances the assessee obtained from the bank the exchange control copy of the relevant bill of entry and submitted the same before the concerned central excise authority.

6. A show cause notice dated 30th June, 1992 was issued by the Superintendent of Central Excise requiring the assessee to show cause as to why the Modvat credit amounting to Rs. 58,70,993/- should not be demanded and recovered under Rule 57-1 of the Rules for failure of the assessee to produce the duty paying document for defacement. The assessee submitted reply and explained the matter. However, being dissatisfied with the reply, the Assistant Commissioner Central Excise Division-Hi NOIDA disallowed the Modvat credit of Rs. 54,12,753/- vide order in original dated 17th June, 1998. Aggrieved with this order the assessee filed an appeal before the Commissioner (Appeals) Customs and Central Excise, NOIDA which was dismissed vide order dated 31st March, 2003 against which the assessee preferred Excise Appeal No. 1896 of 2003-NB (B) before the Customs, Excise and Service Tax Appellate Tribunal, New Delhi which was allowed by the impugned Final Order No. 363 of 2004-B dated 20th February, 2004 [2004 (177) E.L.T. 496 (Tri.-Del.)]. Aggrieved with this order the appellant Department has filed the present appeal.

7. We find that there is no allegation in the show cause notice that the goods in question were not received under the cover of the relevant documents and that the goods were duty paid. The Assistant Commissioner Central Excise Division-III, NOIDA has also not disputed the duty paid character of the goods and the fact that these were received in the factory for intended purpose under the cover

of relevant documents. The case of the department is that the triplicate copy of bill of entry as required under Clause (c) of sub-rule (3) of Rule 57G could not be subsequently produced by the assessee for defacement. The stand taken by the assessee that the triplicate copy of the relevant bill of entry was misplaced, was also not disbelieved either by the Assistant Commissioner or by the first appellate authority. Since the triplicate copy of the bill of entry was misplaced and, as such, the assessee obtained from the bank the exchange control copy of the relevant bill of entry and filed the same along with various other documents. He also executed an indemnity in favour of the Central Excise department to the extent of Modvat credit availed. The said authenticated exchange control copy of the bill of entry obtained by the assessee from the bank could have been easily verified by the authorities. It is not the case of the appellant that the said document was not verifiable. In the impugned order the Tribunal considered the matter in detail and thereafter recorded the following findings of fact in paragraph No. 4 of the impugned order:

"We have considered the submissions of both the sides. It has been the contention of the appellants from the very beginning, that the MODVAT Credit has been taken by them on the strength of the specified documents, which got misplaced afterwards and for the said reason the original copy of transport documents could not be produced by them for defacement purposes. In support of their contention, that they have received the goods, they had produced before the Department photo copy of the Transporter copy of the invoice/challan besides other documents. The very fact that they have produced photo copy of the duplicate copy of challan and triplicate copy of Bill of Entry, goes to show the...of the specified documents on the strength of which credit had been taken by them. The decision relied upon by the learned S.D.R. mainly relates to the situation where the specified documents, such as duplicate copy of the invoice, is lost during transit. In such a situation, the MODVAT can be taken by an assessee on the basis of original copy of invoice only after satisfying the Assistant Commissioner about the loss of the duplicate copy of invoice in transit. In the present matter, the specified copy of Bill of Entry and invoices have been misplaced after the receipt of the goods in the factory. Neither the receipt of the goods in the factory nor their use for the intended purpose nor the duty paid nature has been doubted by the Department. In view of these facts, the appellants are eligible to take the MODVAT Credit of the duty paid on the inputs. We, therefore, allow the appeal."

8. The findings of the Tribunal that neither the receipt of the goods in the factory under the cover of valid documents nor their use for intended purpose nor its duty paid nature has been doubted by the department, are findings of fact. The Tribunal has also recorded a finding of fact that the Modvat credit has been taken by the assessee on the strength of the specified document which got misplaced afterwards. These findings of fact have not been disputed by the appellant even before us. The only contention of the appellant department is that in the absence of triplicate copy of bill of entry, as required under Rule 57G(3) of the Rules,

Modvat credit was lawfully disallowed by the Assistant Commissioner. We do not agree with this contention on the facts of the present case.

9. Rule 57G(3) of the Rules provides as under:

"Rule 57G (3):-- No credit under sub-rule (2), shall be taken by the manufacturer unless the inputs are received in the factory under the cover of any of the following documents, namely:--

(a) an invoice issued by a manufacturer of inputs under Rule 52A or 100E of the said rules;

(b) an invoice issued by the manufacturer of inputs from his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer provided the depot or the premises, as the case may be, is registered under Rule 174;

(c) triplicate copy of a bill of entry;

(d) a certificate issued by an Appraiser of Customs posted in foreign post office;

(e) an invoice issued by a first stage dealer of excisable goods, registered under Rule 174;

(f) an invoice issued by a second stage dealer of excisable goods registered under Rule 174 and duly authenticated by the proper officer;

(g) an invoice issued by a dealer on or before the 31st day of August, 1996;

(h) an invoice issued by an importer registered under Rule 174 and duly authenticated by the proper officer;

(i) an invoice issued by an importer from his depot or from the premises of the consignment agent of the said importer provided the said depot or the premises, as the case may be, is registered under Rule 174, and duly authenticated by the proper officer;

(j) an invoice issued by a first stage or second stage dealer of imported goods registered under Rule 174 and duly authenticated by the proper officer;

(k) duplicate copy of a bill of entry generated on Electronic Data Interchange System installed in any Customs or Central Excise Commissionerate;

(l) a certificate issued by the Superintendent of Central Excise or by the proper officer in the Customs area under Rule 57E; and

(m) an invoice issued by a manufacturer of final products under sub-rule (3) of Rule 57F or sub-rule (1) of Rule 57S.

Explanation - For the purposes of this section -

(I) "first stage dealer" means a dealer who purchases the goods directly from -

(a) the manufacturer under the cover of an invoice issued under Rule 52A or Rule 100 E or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice issued under Rule 57G; or

(b) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice issued under Rule 57G.

(ii) "second stage dealer" means a dealer who purchases the goods from a first stage dealer."

10. Bare reading of sub-rule (3) of Rule 57G clearly indicates that no credit under sub-rule (2) shall be taken by the manufacturer, unless the inputs are received in the factory under the cover of any of the specified documents. In the present set of facts it is undisputed that the inputs were received in the factory under the cover of a triplicate copy of the bill of entry which was subsequently misplaced. The Tribunal has recorded a finding of fact that the specified copy of bill of entry and the invoices were misplaced after the receipt of the goods in the factory.

11. In view of the above discussions and on the facts of the present case, we find no merit in the present appeal. The question of law, as framed above, is answered in favour of the assessee and against the appellant. In result the appeal fails and is hereby dismissed.