(2016) 07 P&H CK 0203

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 19160 of 2007 (O&M)

Jindal Electricals APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:

Citation : (2016) 339 ELT 568

Hon'ble Judges : Rajesh Bindal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : S/Shri Deepak Gupta for Jagmohan Bansal, Advocates, for the Petitioners; Shri Anshuman Chopra, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J.—The grievance of the petitioner is that he has been denied Modvat credit on the goods purchased by him from wholesale dealer. The goods were purchased on 30-6-1994. The registration of the selling wholesale dealer under the Central Excises and Salt Act, 1944 (for short, ''the Act'') at that time was not required. Vide order dated 10-6-1996, the adjudicating authority directed the petitioner to reverse the Modvat credit of Rs. 65,035/- taken by it. He further imposed a penalty of Rs. 10,000/-. In appeal before the Commissioner (Appeals), the petitioner succeeded. Vide order dated 14-11-1996, the order passed by the adjudicating authority was set aside and the appeal was allowed subject to verification about the genuineness of the documents. As the Commissioner (Appeals), imposed condition for registration of the selling dealer before 31-12-1994, the petitioner preferred further appeal to Customs, Excise & Gold (Control) Appellate Tribunal, which was rejected vide order dated 24-10-2000 [2012 (148) E.L.T. 136 (Tri. - Del.)].

2. After hearing learned counsel for the parties, we find that the petitioner in the present case is entitled to Modvat credit on duty paid at the time of purchase of goods vide invoice dated 30-6-1994 from a wholesaler. The requirement that the selling wholesaler should be a dealer registered with the department under the

Act was notified on 4-7-1994 vide Notification No. 32/94-C.E. (N.T.). For any sale made by a wholesaler prior thereto, there was no such condition. The extract from the notifications dated 30-3-1994 and 4-7-1994 are reproduced below :-

Notification dated 30-3-1994 :

"Modvat ? Particulars to be indicated in the invoice

In exercise of the powers conferred by rule 57G of the Central Excise Rules, 1944, the Central Government hereby prescribes the invoice issued by -

(i) a manufacturer from his factory or depot; or

(ii) wholesale distributor/dealer of a manufacturer who has bought the excisable goods either from the manufacturer at the factory or from the manufacturer''s depot; or

(iii) an importer from his godown;

containing -

(a) the rate and the amount of duty, both in words and figures, and such other particulars as may be prescribed by the Collector or as the case may be, Central Board of Excise & Customs;

(b) details of serial number and date of, and quantity of inputs mentioned in, the invoice issued under rule 52A or as the case may be Bill of Entry; and

(c) if issued by the wholesale distributor/dealer, the serial number and date of the invoice issued by the manufacturer to the dealer."

Notification dated 4-7-1994

"Modvat Credit ? invoice of registered dealer acceptable

In exercise of the powers conferred by rule 57G of the Central Excise Rules, 1944 and in supersession of notification of the Government of India in the Ministry of Finance, Department of Revenue No. 15/94-C.E. (N.T.), dated the 30th March, 1994, the Central Government hereby prescribes the invoice issued by -

(i) a manufacturer from the factory or his depot; or

(ii) dealer of an excisable goods registered with the Central Excise Officer; or

(iii) an importer from his godown; or

(iv) dealer of an imported goods registered with the Central Excise Officer;

containing the details as are prescribed under Rule 57GG of the Central Excise Rules, 1944, as a document for the purpose of rule 57G."

3. Though the first Appellate Authority accepted the plea raised by the appellant regarding his entitlement of Modvat credit, however, he had put a condition that the supplier should get himself registered under the Act before 31-12-1994.

Such a condition could not be made applicable in the case of the petitioner as it was not within his control to get registration for the selling dealer. As regards payment of duty on the goods purchased by the petitioner is concerned, necessary facts pertaining thereto were noticed by the Commissioner (Appeals) in his order with reference to invoice number and date, which was issued by the manufacturer M/s. Bharat Heavy Electricals Limited. As per those details, the excise duty was debited in the PLA account on 17-6-1994.

4. For the reasons mentioned above, we find merit in the present petition. The same is allowed. It is directed that the appellant shall be entitled to Modvat credit of Rs. 65,035/- on account of purchase made vide invoice dated 30-6-1994.