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(2024) 04 CESTAT CK 0033

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 859 Of 2011

M/s. Tata Motors Limited — APPELLANT

Vs

Commissioner Of Central Excise — RESPONDENT

Date of Decision : 24-04-2024

Acts Referred:

Central Excise Rules, 1944 — Rule 52, 57A, 57I, 173G

Citation : (2024) 04 CESTAT CK 0033

Hon'ble Judges : Ashok Jindal, Member (J);K. Anpazhakan, Member (T)

Bench : Division Bench

Advocate : Rahul Tangr, S. Mukhopadhyay

Final Decision : Allowed

Judgement

K. Anpazhakan, Member (T)

1. The present appeal has been filed against Order-in-Original 33/Denovo/ Commissioner/2011 dated 01.08.2011 passed by the Ld. Commissioner of Central Excise and Service Tax, Jamshedpur.

2. The issue involved in the appeal is denial of MODVAT Credit on the ground that the duty payment particulars were not available in the documents submitted by the appellant for availing the credit.

3. The facts of the case are that the appellant had availed MODVAT Credit on the strength of challans-cum-invoices issued by different stockyards of M/s. Steel Authority of India Limited (SAIL). The Department contended that the challan-cum-invoices were not ‘invoices’ prescribed under Notification No. 15/1994-C.E. (N.T.) dated 30.03.1994 as the same did not contain the following particulars required under the said Notification: -

(1) Rate of duty and amount of duty were not mentioned;

(2) Serial No. and date of challan were not given;

(3) Quantity of inputs not given;

(4) Duty debit particular were not given.

4. As per the provisions of erstwhile Rule 57A of the Central Excise Rules, 1944, MODVAT Credit of duty paid on inputs was available on the basis of invoice containing details such as amount of duty, Central Excise Registration number and duty debit particulars issued by the manufacturer. However, vide Notification No. 15/94-C.E.(N.T.) dated 30.03.1994, relaxation was made and MODVAT Credit became available on challans-cum-invoices issued by stockyard of the manufacturer also, subject to the condition that such invoice/challan-cum-invoice contain the above particulars. Since the challan-cum-invoices on the strength of which the appellant availed credit did not contain details of payment of duty, it appeared to the Revenue that the credit availed by the appellant was wrong and such credit availed were disallowed, vide the impugned order.

5. Initially, credit was denied to the appellant vide Order-in-Original No.75/Commr./2004 dated 03.01.2005. The said order was set aside and remanded back by the CESTAT, Kolkata vide Order No. A-471/KOL/2010 dated 28.07.2010 to the adjudicating authority with a direction to the appellant to produce necessary documentary evidence in support of their claim. Thereafter, the impugned order has been passed by the ld. Adjudicating authority as per the direction issued by the CESTAT. In the impugned order, the ld. adjudicating authority observed that the appellant has not produced any evidence regarding the duty-paid details in the challans-cum-invoices. Accordingly, MODVAT Credit on inputs to the extent of Rs.58,01,013.14/- availed by the appellant was denied under Rule 57I of the Central Excise Rules, 1944. Aggrieved by the said order, the appellant is before us.

6. The appellant submits that in the instant case, MODVAT Credit has been denied only on the ground that the challans-cum-invoices issued by M/s. SAIL did not contain duty payment particulars viz., debit entry number and date, to prove that the inputs had suffered duty.

6.1. They further submit that SAIL authorities vide letter dated 27.11.1992 had communicated to the appellant that:

? Excise authorities have given relaxation to M/s. SAIL under Rule 52 and Rule 173G of the Central Excise Rules, 1944 from obtaining individual gate passes,

? instead, customer copy of the invoice-cum-challan issued by M/s. SAIL should be considered as the valid document for availing MODVAT credit.

It is therefore submitted that the invoice issued by the manufacturer from its factory as well as depot is a valid document for availing credit in terms of Notification No. 15/1994-C.E.(N.T.).

6.2. They further submit that there is no allegation in the Show Cause Notice or in the impugned Order-in-Original to the effect that the goods on which MODVAT

Credit was availed: -

? were not received in the factory premises of the appellant;

? no payment has been made by the appellant to the suppliers for the challans-cum-invoices under cover of which inputs have been received and

? were not used in relation to manufacture of the final product.

6.3. In the absence of any such allegation, it is the contention of the appellant that substantive benefit of MODVAT Credit cannot be denied due to mere procedural lapses. In support of this contention, they relied upon the following decisions: -

i. Tata Motors Ltd. v. Commissioner of C.Ex., Jamshedpur [2010 (251) E.L.T. 253 (Tri. – Kol.)]

ii. Tata Motors Ltd. v. Commissioner of C.Ex., Jamshedpur [2010 (252) E.L.T. 265 (Tri. – Kol.)]

6.4. It is further submitted by the appellant that in an exactly similar dispute raised by the Department for the period April to July 1994 and February to April 1995, the ld. Joint Commissioner, Central Excise, Jamshedpur vide Order-in-Original No. 57-60/Joint Commr./2004 dated 25.08.2004 dropped the demand raised on the appellant on the ground that substantive benefit of MODVAT Credit could not be denied for a technical irregularity.

6.5. Accordingly, they prayed for allowing the MODVAT Credit availed by them.

7. The Ld. Authorized Representative for the Revenue reiterated the findings in the impugned order.

8. Heard both sides and perused the appeal documents.

9. We observe that the issue involved in the present appeal is whether the challans-cum-invoices issued by M/s. SAIL, which do not contain the duty payment details, is the proper document for availing the MODVAT Credit or not.

9.1. We observe that Notification No. 15/1994-C.E.(N.T.) dated 30.03.1994 provides relaxation to avail MODVAT Credit on the basis of challans-cum-invoices issued by stockyards of manufacturers subject to the condition that such challans-cum-invoices shall contain all the duty payment particulars. In the present case, it is alleged that the challans-cum-invoices based on which the appellant availed credit did not contain the details of payment of duty and accordingly, the MODVAT Credit has been disallowed.

9.2. We observe that there is no allegation in the Show Cause Notice or the impugned Order-in-Original that the appellant had not received the goods in the premises of the factory. There is no allegation that the supplier viz. M/s. SAIL has not made payment of duty. If there was any doubt regarding payment of duty by M/s. SAIL, then the Department should have demanded the duty from M/s. SAIL and not from the appellant. As far as the appellant is concerned, they have received the goods into the factory on payment of appropriate duty and utilized the same in the manufacture of their finished products based on the challans-cum-invoices issued by the depots of M/s. SAIL. Thus, we observe that there is no dispute regarding the duty-paid nature of the goods.

10. We are in agreement with the submission of the appellant that substantive benefit of MODVAT Credit cannot be denied due to procedural lapses. In this regard, reliance is placed on the decision in the appellant's own case as reported in 2010 (251) E.L.T. 253 (Tri. – Kol.) wherein it has been observed as under: -

"6. As regards denial of credit of Rs. 1,020/-, on the ground that the duty debit reference is not mentioned in the invoice, we have already held that such a failure, if any, is only a technical omission. As the invoices have indicated the name of the consignor, consignee, the quantity of materials supplied and the duty paid, we hold that the denial of credit is not justified. Demand in this regard is also set aside."

10.1. The same view has been taken by the Tribunal, Kolkata in the appellant's own case as reported in [2010 (252) E.L.T. 265 (Tri. – Kol.). The relevant paragraph of the said order is reproduced below: -

"10. Duty paying particulars not mentioned -

Amount of credit involved: Rs. 70,815/- :

It was claimed by the appellant that inadvertently, the supplier of the inputs have not indicated in the invoices debit entry No. in PLA/RG-23A.. However, the invoices clearly indicated the consignor, consignee, the quantity of materials supplied and the amount of duty involved.

Ld. SDR submits that during the relevant period, the particulars required to be incorporated in the invoices specifically included Sl. Nos. of debit entry in PLA/ RG-23A.

We notice that a lot of developments in procedure have taken place and as of now, the supplier of inputs is required to make one consolidated entry in respect of clearances effected during any month and as a result, the invoices based on which credit are being taken, as of now, do not indicate the PLA/RG-23A debit details. In view of the above, we are of the opinion that this omission, if any, was a technical omission. On this ground the credit should not be denied. Demand in this regard is also set aside."

11. We also observe that a similar demand raised by the Department against the appellant for the period April to July 1994 and February to April 1995 has been dropped vide Order-in-Original No. 57-60/Joint Commr./2004 dated 25.08.2004.

12. In view of the above discussion and the decisions cited supra, we are of the view that substantive benefit of MODVAT Credit cannot be denied on the ground of procedural lapses. Accordingly, we hold that the appellant is eligible for the

MODVAT Credit on the basis of the challans-cum-invoices issued by the depots of M/s. SAIL.

13. In the result, we set aside the impugned order and allow the appeal filed by the appellant.

