

THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CENTRAL EXCISE APPEAL No.50 of 2004

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JUDGMENT: (per Hon'ble Sri Justice K.C.Bhanu)

This appeal is directed against the order, dated 24.05.2004, in Appeal No.E/121/2003 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, whereunder and whereby, appeal filed against order, dated 29.10.2002, in Appeal No.108/2002 (H-I) CE passed by the Commissioner of Central Excise (Appeals), Hyderabad, was rejected.

2. The short point that falls for consideration is whether the appellant Company can avail the Modvat credit on the basis of original invoice.

3. Learned counsel for the appellant placed reliance on a decision reported **ENCEE DYING & PRINTING WORKS LTD. V. COMMISSIONER OF C.EX., MUMBAI-V^[1]**, wherein it is held thus (para 3):

“3. I note that, so far as the first ground is concerned, the rule does not require a prior permission. It is only in the event, the Assistant Commissioner is not satisfied about the loss in transit, then the credit can be denied. Therefore, this ground of rejection is without any merit. So far as the ground of inadequacy of precautions relating to loss of duplicate copy is concerned, the original authority has denied the credit, not on the basis of his subjective finding that such a loss has occurred, but on the ground that transporter ought to have taken suitable measures to avoid this loss. The loss in transit itself is not disputed. The order in appeal, however,

asserts that prior permission is required and *post facto* condonation is not permissible. This finding cannot be supported as only requirement of Rule 57 G(A) is that the appellant had to merely demonstrate that there had been a loss of duplicate copy of the invoice in transit. In that situation only on the basis of the Assistant Commissioner's finding to the effect that there had been no such loss the credit could have been disallowed. In the absence of such a finding, the appellants are entitled to take the credit."

That is a case where the appellant company lost the duplicate copy of the invoice in transit and that fact has not been denied or disputed, therefore, it was held that the appellant company therein is entitled to Modvat credit.

4. On the other hand, learned counsel for the respondent placed reliance on a larger Bench decision reported in **COMMISSIONER OF C. EX., NEW DELHI V. AVIS ELECTRONICS PVT. LTD.**^[2], wherein it is held thus (para 6):

"6. Learned D.R. representing the Revenue submitted that a manufacturer can take credit of the duty paid on inputs on the basis of the original invoice only if he satisfies the jurisdictional Assistant Collector the factum of loss of the duplicate copy of the invoice in transit. According to him, the loss of the invoice should have happened in the course of the transit of the goods; namely while the invoice was in the possession of the driver of the vehicle in which the inputs were brought to the manufacturer's premises. We are not in a position to agree with this submission. If this argument is to be accepted we will have to read some more words into the rule. Relevant words used in clause (2A) of Rule 57G are "if the duplicate copy of invoice has been lost in transit." To give

effect to the submission made by the learned D.R. the above provision should be read as “if the duplicate copy of the invoice has been lost in transit of the inputs to the premises of the manufacturer.” Understanding the provision contained in the Rules, this Tribunal is not to supplement or add words to the Rules. The Rule, as it stands, states that the duplicate copy of the invoice must have been lost in transit. What is the true scope of the word “transit”? Invoice is prepared by the person who sends the input. A manufacturer who wants to take credit of the duty paid on such inputs must produce the invoice before the jurisdictional officer to get it defaced. So, the transit of the duplicate copy of the invoice is from the person who sold the inputs to the office of the concerned excise officer. In the course of this transit, if the duplicate copy of the invoice is lost, manufacturer should establish the same to the satisfaction of the concerned Assistant Collector. On the Assistant Collector’s satisfaction regarding the loss of the duplicate copy of transit, the manufacturer can take credit of the duty paid on inputs received in the factory on the basis of the original invoice. Only on such a condition the original invoice can be of assistance to the manufacturer enabling him to take credit of the duty paid on the inputs. This is the legal position. Contrary view expressed in the case of *Mahavir Spinning Mills* (1998 (98) E.L.T. 164 is not the correct legal position.”

The ratio laid down in the above judgment is very clear that the Modvat credit cannot be taken on the original invoice. It is not the case of the appellant Company that it lost duplicate copy of the invoice in transit.

5. Furthermore, the circular instructions issued by the Government

of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, New Delhi in Circular No.68/68/94-CX, dated 24.10.1994, read as follows (para 4):

“4. The credit can be availed only on the duplicate invoices issued under rule 52A or Rule 57GG and the original invoices can be used for taking credit only where the duplicate invoice is lost in transit and that too after proper scrutiny and the satisfaction of the Assistant Collector. As such taking a credit against original instead of duplicate documents should be exceptional rather than general practice. It seems that this aspect is not properly verified due to routine inspection/verification by the Range Officer/Audit Parties and other senior officers.”

As seen from the above circular instructions, it would clearly indicate that the Modvat credit can only be availed on duplicate invoices and the Department is bound to follow the circular instructions in view of the judgment reported in **UNION OF INDIA V. ARVIVA INDUSTRIES**

(I) LTD.^[3], wherein it was held thus (para 6):

“6. In this particular case, the Board's Circular No.39/99-Cus., dated 25th June, 1999 extends the benefit of Brand Rate of Drawback to compensate exporters for the re-rolled steel products and processed fabrics. The High Court has rightly come to the conclusion that the circulars issued by the Board are binding on the department. An effort was made by the learned Solicitor General to get this case referred to a larger Bench. We do not accept this contention in view of number of decisions and especially the Constitution Bench decision in *Dhiren Chemical Industries (I)* (*supra*).”

From the above circular instructions, it is clear that the circular instructions are binding on the department and in pursuance of circular instructions only, the order impugned before appellate authority was passed and that order needs no interference by this Court.

6. Accordingly, the Central Excise Appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C.BHANU, J

M.SEETHARAMA MURTI, J

FEBRUARY 12, 2015

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DATE: 12.02.2015

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[\[1\]](#) 2004 (166) E.L.T. 270 (Tri.-Mumbai)

[\[2\]](#) 2000 (117) E.L.T. 571 (Tri.-LB)

[\[3\]](#) 2007 (209) E.L.T.5 (S.C.)