Collector of Central Excise Vs. Uttam Ind. Engg. P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-26-1996

Reported in : (1997)(89)ELT87TriDel

Appellant : Collector of Central Excise

Respondent : Uttam Ind. Engg. P. Ltd.

Judgement :

1. This is an appeal filed by the Department against the order of Commissioner (Appeals), Ghaziabad dated 8-3-1996.

2. Ld. DR stated that in this case the respondent had taken Modvat credit on the basis of invoices issued by dealers who had neither been appointed as dealers of the manufacturer nor registered as such.

Therefore, the invoices issued by such dealer did not come in the category of the prescribed documents acceptable for the purposes of taking Modvat credit in view of Notification No. 15/94, dated 30-3-1994. The Commissioner (Appeals) has however, allowed the benefit.

Hence, the petition.

3. Ld. Counsel stated that the Commissioner has rightly allowed the benefit as under Notification No. 15/94, dated 30-3-1994 the invoices issued by - (i) a manufacturer from his factory or (ii) a wholesale distributor or a dealer of a manufacturer who has bought the excisable goods either from the manufacturer at

the factory or from the manufacturer's [depot] were declared as acceptable documents for the purposes of 57G.4. The Commissioner has taken into consideration [Section 2(k)] which defines a 'wholesale dealer' and only thereafter allowed their appeal.

5. It would be seen from the notification that there is no such condition that a wholesale dealer must be so appointed by the manufacturer. As such there was also no provision regarding registration at that time.

6. The goods in the case of all the three suppliers had been purchased by them directly from the manufacturer and there was no doubt or dispute regarding this fact.

7. Out of the three invoices in question the first two has been issued by M/s. Enn Pee Agencies, Delhi who had purchased it directly from GEC Alsthom India Ltd. who are the manufacturers of the goods in question.

8. Although it is their contention that no appointment or authorisation by the manufacturer was necessary in terms of notification, however, they are producing dealership certificate issued by the manufacturers in favour of M/s. Enn Pee Agencies appointing them as authorised dealer.

9. Ld. DR had nothing to say in reply and stated that he would only like to reiterate the Department's view point as contained in the Grounds of Appeal.

10. I have considered the above submissions. I observe that the ld.Counsel is correct in pointing out that the Notification No. 15/94 does not talk of appointment of any dealer as wholesale dealer or any particular authorisation by the manufacturer and recognises the invoices issued by a wholesale dealer in r/o goods bought either from the manufacturer at the factory or from the manufacturer's [depot] and in this respect there is no dispute. Ld. Commissioner has therefore, rightly taken into account the definition of wholesale dealer as given in Section 2(k) and the above provisions of the notification which allowed the benefit. I, therefore, see no reason to interfere with his order. The appeal is therefore, rejected.