Commissioner of C. Ex. Vs. Pratap Steel Rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-1997

Reported in : (1997)(93)ELT466TriDel

Appellant : Commissioner of C. Ex.

Respondent : Pratap Steel Rolling Mills

Judgement :

1. Commissioner, Central Excise, Chandigarh by the captioned reference application has submitted that the following point of law arises out of the decision of the Tribunal's order No. A/1579/96-NB, dated 17-6-1996 : "Whether subsidiary gate passes issued on 31-3-1994 is a valid documents for availing modvat credit as per Notification No. 16/94-CE(NT), dated 30-3-1994, since the subsidiary gate passes ceases to be a prescribed document after 31-3-1994." 2. Shri V.R. Sethi, ld. DR appears for the appellant Commissioner whereas none appeared for the respondent. Not. No. 16/94-CE (NT), dated 30-4-1994 is represented below for proper appreciation: "In exercise of the powers conferred by Rule 57C of the Central Excise Rules, 1944, the Central Govt. hereby prescribes the documents specified in column (3) of the Table hereto annexed and issued under the authority of the Central Board of Excise and Customs or the Central Excise Rules, 1944 specified in the corresponding entry in column (2) of the said table for the purpose of the said rule: Provided that the documents have been issued before the 1st April, 1994 and the credit under the said rule has been taken on or before the 30th June, 1994.--Sl.

Authority of the CBEC or the Central Excise Rules, DocumentsNo.1994---(1) (2) (3)--- ...

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(i) F. No. 263/26/88-CX. 8, dated 23rd Endorsed gate passes/ January, 1989 subsidiary gate passes/certificates" I find that proviso to this notification reads, "provided that the documents have been issued before 1-4-1994 and the credit under the said Rule has been taken on or before 30-6-1994." Shri V.R. Sethi, JDR submits that the date while formulating the point of law has not been correctly indicated and that there is typographical error in the formulation of the question. He submits that in the instant case subsidiary gate passes were issued after 31-3-1994.1 also find that against serial No. 10 in the column 'document subsidiary gate pass is mentioned'. Reading the proviso I find that the Not. No. 16/94-C.E., dated 30-3-1994 specifically lays down that the subsidiary gate pass will be a valid document for taking Modvat credit only if it was issued before 1-4-1994. In the instant case, the admitted position is that subsidiary gate pass No. 440 was issued on 8-4-1994. Thus I find that it is not covered by the proviso to Not. No. 16/94. In the circumstances, I find that a point of law is involved. The question can be formulated as under : "Whether subsidiary gate passes issued after 31-3-1994 is a valid document for availing Modvat credit as per Not. No. 16/94-CE (NT), dated 30-3-1994, since the subsidiary gate passes cease to be a prescribed document after 31-3-1994." Registry is directed to refer the above question of law to the Hon'ble Punjab & Haryana High Court after preparing the statement of the case.