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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-03-1997

Reported in : (1997)(96)ELT602TriDel

Appellant : Subros Limited

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order of Collector (Appeals), Ghaziabad dated 4-11-1992.

2. Learned Counsel stated that the appellants had imported aluminium raw material for manufacture of condensers and evaporators, - parts of automotive air-conditioning system which they manufacture.

3. The consignment was received in the factory and Modvat credit of CVD was taken but the entry in RG 23A Part I was not made by oversight of the dealing clerk the benefit on this ground and the Collector had confirmed the A.C.'s order stating that maintaining proper account in the form of RG 23A Parts I & II was mandatory.

5. It was his submission that there is no dispute that the goods were not received or used in the manufacture of the declared products or were not otherwise entitled to the benefit of Modvat.

6. They had produced before the authorities below all documents being maintained by them which would go to show that the goods had been duly received under the cover of proper duty paying documents namely, the Bills of Entry under which they had been cleared from customs and various records maintained by them to show that they have been issued for manufacture and utilised as such. It was his submission that there is no doubt that maintaining proper records in the form of RG 23A Parts I and II was mandatory and they were maintaining such records but the entry remained to be made in Part I due to a clerical error which was condonable and in any eventuality, the Modvat could not be denied merely on account of such procedural error as has been held in a series of Tribunal's orders including those reported in 1996 (73) E.L.T. 660, 1996 (81) E.L.T. 563 (Tribunal), 1993 (65) E.L.T. 460 (Tribunal) and 1997 (18) R.L.T. 499.

7. Furthermore, the same Collector has allowed them the benefit of Modvat in an exactly similar matter in the appellants' own case themselves where the facts were the same as apparent from the copy of the Order- in-Appeal No. 295-CE/MRT/94 a copy of which is produced herewith.

8. It was his submission that it could be understood if some penalty was imposed in case of proved carelessness or negligence but the benefit of Modvat should not be disallowed in such circumstances where the appellants are able to show substantive compliance with the requirements of Modvat scheme.

9. Learned DR drew attention to the order-in-original and order-in-appeal and reiterated the Department's view as contained therein.

10. I have considered the above submissions. I observe that there is a lot of force in the arguments of the learned Counsel.

11. It has already been held in a series of Tribunal's orders that a substantive benefit if otherwise due should not be disallowed merely on account of minor procedural infractions. In the present case, there is no dispute that both the inputs and outputs had been duly declared and the inputs had been received on importation under cover of relevant Bill of Entries an duly utilised in the manufacture of declared final product. Since the appellants have been able to

show substantive compliance with the provisions, therefore, the Collector should have allowed the benefit as he has rightly done in his another, order in Order-in-Appeal No. 295-CE /MRT/94 in the appellants' own case.

12. Hence, following the ratio of the Tribunal's aforesaid orders, the appeal is allowed with consequential relief, if any due.

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