

Collector of C. Ex. Vs. Allied Electronics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-17-1997

Reported in : (1997)(95)ELT252TriDel

Appellant : Collector of C. Ex.

Respondent : Allied Electronics

Judgement :

1. The facts leading to the present appeal are that the respondents therein imported Hurbrings and Lap film and claimed Modvat credit of duty. In this case the appellants took credit of duty on the above imported item on 5-4-1986. Whereas the declaration was filed on 24-4-1986. On 8-7-1987 they filed a request under Rule 57H for availing Modvat credit in respect of inputs for which a declaration was filed on 24-4-1986. The Asstt. Collector rejected their application on 20-8-1987. Against this order of the Asstt. Collector the appellant filed an appeal before the Id. Collector (Appeals) on 13-5-1988. The Id. Collector (Appeals) considered the issue on merits alone and allowed their appeal but did not take into consideration that the appeal filed by the appellants was beyond the time for filing appeal allowed under Section 35 of Central Excises and Salt Act, 1944. Against this the Department has filed the present appeal before us.
2. Shri P.K. Jain, the Id. SDR arguing appeal on behalf of the appellant Commissioner submits that Asstt. Collector is the proper officer who can deny Modvat credit. He submits that the Asstt.

Collector by his letter dated 28-8-1987 had informed the respondents that Modvat credit on the items was not admissible to them. That against this order the appellants filed the appeal which was received in the office of Id. Collector (Appeals) on 13-5-1988. The Id. SDR submitted that the appeal was much beyond a period of 3 months. He submits that no doubt the Collector (Appeals) has power to condone a delay of three months; that even if this power of the Id. Collector (Appeals) is taken into consideration the appeal filed is still beyond the time of six months. He, therefore, submits that on this ground alone the order passed by the Id. Collector (Appeals) reserves to be set aside. He therefore prayed that the appeal may be allowed.

4. Heard the submissions of the Id. SDR. Perused the records. We find that the order which has been appealed against was communicated by the Asstt. Collector on 20-8-1987 appeal against this order was submitted by the appellants on 13-5-1988. Thus the appeal was filed beyond a period of 8 months since the maximum time admissible including that condonable is six months. The appeal was filed beyond a period of 8 months therefore we agree with the contention of Id. SDR that the appeal is hit by limitation. We therefore hold that the appeal filed by the assessee before the Id. Collector (Appeals) was time barred. The appeal of the Department is therefore allowed and the impugned order is set aside.

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