industrial Cables Vs. Commissioner of Central Excise

industrial Cables Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/11869

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-24-1997

Reported in : (1997)(96)ELT178Tri(Mum.)bai

Appellant : industrial Cables

Respondent : Commissioner of Central Excise

Judgement :

1. In the order impugned in the appeal, the Collector, adjudicating upon a notice issued to the assessee, has said that it was not entitled to take Modvat credit of the duty paid on copper rods and bars received by it as an input, for the reason that the certificate evidencing payment of duty by the manufacturer M/s. Hindustan Copper Ltd. was not valid for the purpose of taking credit. The notice dated 3-4-1991 called upon the assessee to show cause why credit taken on 8th April, 1986 and 17th March, 1990 should not be recovered.

2. The notice has thus clearly been beyond six months from the date of taking credit. Although before its amendment in 1988 Rule 56-I there was no specific time limit in Rule 56-I for recovery of credit already taken, the Larger Bench of this Tribunal in Breach India v. CCE has read into that rule, a period of six months in the normal course or five years where the parties specified in the proviso to Section 11A are invoked for such licences that period has to be calculated from the date on which the RT12 returns were required to be filed. Therefore unless it can be shown that there was any of the factors specified in the proviso to Section 11A and subsequently the proviso to Rule 1 Reference seems to "Sub-rule": Ed. of

Rule 57-1 existed the demand would be barred by limitation.

3. The notice alleged that the appellant had wilfully suppressed the existence of facts did not indicate the existence of these factors. In his order the Collector has found that there was mis-statement of facts in that the appellant took credit on the basis of documents which were not prescribed. The basis for invoking the extended period is thus itself the basis for the notice has to be held that there has been no specific naration of facts in which the charge of misstatement, suppression etc. could be supported. Further the Director has not rebutted the contention raised before him by the assessee, that it had enclosed the certificates of M/s. Hindustan Copper Ltd., which took credit in the returns required to be filed in terms of Sub-rule (2) of Rule 57G and that the department was therefore aware of the fact that credit had been taken. It has therefore to be held that there is no basis for invoking the extended period. The demand is thus barred by limitation.