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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-31-1997

Reported in : (1998)(101)ELT356TriDel

Appellant : Zest Pharma

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant filed this appeal against the order-in-original dated 28-11-1996 passed by the Commissioner of Central Excise. In this case the benefit of Modvat credit in respect of the generator set of 50 KVA was denied to the appeal as capital goods and penalty was also imposed as the appellant has wrongly availed the credit and interest of Rs. 838/- was also levied under Rule 57U(6) of the Central Excise Rules, 1944.

2. When the case was called, no one appeared on behalf of the appellant. The appellant vide their communication dated 9-10-1997 made request to decide the appeal on merits.

3. In the grounds of appeal, the contention of the appellant is that they have installed the generator set after 23-7-1996 and after 23-7-1996, generator set of 50 KVA were entitled to the benefit of Modvat credit as capital goods. In the appeal memo they submitted that the D.G. Set reached the factory of the appellant on 29-6-1996 and it was unloaded outside the factory gate. The Generator set was in fact installed in the factory on 23-7-1996.

4. Shri D.K. Nayar, appeared on behalf of the Revenue and submitted that from the record of the appellant, it was proved that D.G. Set was received by the appellant before 23-7-1996 and on that date generator set of 50 KVA were not eligible for the benefit of Modvat credit as capital goods.

5. Heard both sides. In this case the only question involved in this case is whether the D.G. Set was installed after 23-7-1996 as pleaded by the appellant. Before 23-7-1996 the generator set of 50 KVA were not eligible for the benefit of Modvat credit as capital goods. The Commissioner of Central Excise in the impugned order in para 6 recorded that the party had admitted their mistake and specifically waived their right for show cause notice. Shri Sudhir Vohra partner of the appellant firm in his statement admitted before the officers of the Revenue that D.G. set was received in the factory premises on 29-6-1996. The bill dated 29-6-1996 was by the handling agent for unloading this generator set at the factory premises. Shri Sudhir Vohra also in his statement admitted his liability and stated that they will deposit the amount wrongly taken as credit.

6. In view of the above discussion, we do not find any infirmity in the impugned order and appeal is dismissed. Operative part of the order was pronounced in the court on 31-12-1997.