international Transformers (P) Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-05-1998

Reported in : (1998)(103)ELT61TriDel

Appellant : international Transformers (P)

Respondent : Commr. of C. Ex.

Judgement :

1. Shri T.K. Srivastava, ld. Advocate arguing for dispensing the pre-deposit of duty amounting to Rs. 81,013,02 (sic) submits that the applicants are engaged in the manufacture of electrical transformers. A dispute arose whether the transformer oil supplied with the transformers is eligible to Modvat credit or not. The Department alleged that the transformer oil was not eligible to Modvat credit inasmuch as transformer oil is put into transformer only after the manufacture of transformer was complete. The transformer oil acted as coolant and cannot be regarded as an input in terms of Rule 57A. The ld. Counsel cites and relies upon the decision of this Tribunal in the case of NGEF Limited v. CCE [1996 (87) E.L.T. 722] and in the case of same company reported in 1995 (77) E.L.T. 238. The ld Counsel submits that in their case the transformer oil was filled in the transformer before its clearance and, therefore in terms of decision of South Regional Bench of this Tribunal, they were entitled to the benefit of Modvat credit of duty paid transformer oil. He also contends that the value of transformer oil is included in the value of transformer for the purpose of levy of duty on transformer.

2. Opposing the request for dispensing with pre-deposit of duty, Shri Sanjeev Srivastava, ld. JDR submits that the manufacture of transformer is complete before transformer oil is filled in the transformer. He submits that the impugned order does not show that the transformer oil was filled in the transformer after the manufacture of the transformer but before its clearance. He, therefore, prays that the applicants may be directed to deposit the entire amount of duty.

3. Heard the submissions of both sides. On careful consideration of the evidence placed before me and submission made, I find that the entire issue is arguable and there is no finding on the issue whether the transformer oil was filled in the transformer at the time of clearance or not. Having regard to the facts and circumstances of the case, I direct the applicants to deposit a sum of Rs. 25,000/- on or before 5-5-1998 and report compliance on 12-5-1998.

4. On compliance of this order, recovery/balance amount of duty shall remain stayed during the pendency of the appeal.

5. Non-deposit of this amount shall lead to dismissal of the appeal without any further notice.