

Commissioner of Central Excise Vs. Sai Electricals

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-13-1998

Reported in : (1998)(101)ELT646TriDel

Appellant : Commissioner of Central Excise

Respondent : Sai Electricals

Judgement :

1. The question involved in the present case whether a declaration submitted u/r 57G to the Superintendent is sufficient for the purpose of that Rule. The Lower Appellate Authority has held that in view of the Tribunal judgment in the case of Metalfab Industries reported in 1994 (74) E.L.T. 734, the declaration made to the Supdt. is valid because the concerned Supdt. is a part of the Divisional Office.
2. It is against the aforesaid order that the Revenue has now come up in appeal.
3. Learned JDR Shri D.K. Nayyar has stated that filing of declaration before the Asstt. Collr., C. Ex. and obtaining acknowledgement from him is a mandatory requirement; that having not been done by the respondents herein, the declaration cannot be treated as received by the Revenue Authorities and therefore, Modvat credit is required to be denied.
4. Opposing the contention of the Id. DR, Shri Surinder Mullick, learned Advocate reiterated the findings of the Lower Appellate Authority as already set out above.

5. In my view, it is only a procedural lapse committed by the respondents in the first instance. The Department also cannot be absolved of its negligence inasmuch as the Supdt. accepted the declaration and ultimately communicated to the Asstt. Collr. It cannot, therefore, be said on the submission of the Id. Advocate that no declaration was made by the respondents as alleged in the Revenue's appeal filed.

6. I agree with the submission of the learned Advocate for the respondents that Modvat credit cannot be denied to the respondents on the basis of procedural lapse committed by the respondents when declaration was accepted by the Supdt. From the aforesaid narration of the fact, I agree with the submission of the learned Advocate that Modvat credit cannot be denied to the respondents. Accordingly, I do not find any merit in the Revenue's appeal.

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