

Commissioner of Central Excise Vs. Rampur Engg. (P) Ltd.

Commissioner of Central Excise Vs. Rampur Engg. (P) Ltd.

SooperKanoon Citation : sooperkanoon.com/13660

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-17-1998

Reported in : (1998)(103)ELT428TriDel

Appellant : Commissioner of Central Excise

Respondent : Rampur Engg. (P) Ltd.

Judgement :

1. Shri D.K. Nayyar, Id. JDR prays for admission of appeal filed by the department. The lower appellate authority has allowed the Modvat credit on the basis of invoices in which certain particulars were supplied subsequently by the original manufacturer i.e., the Stock Yard of Indian Iron and Steel Co.

2. Shri Nayyar has contended that the aforesaid order passed by the lower appellate authority is not correct in law inasmuch as the invoice was not correct in the first instance, on the basis of which Modvat credit could be allowed. Subsequent supply of material particulars cannot entitle the respondents herein to take the Modvat credit. For this proposition he relies on Tribunal's judgment of a Single Member in the case of Durga Steels Pvt. Ltd. v. CCE, Chandigarh - 1998 (100) E.L.T. 283 (Tribunal). He also relies on Apex Court's judgment in the case of Indian Aluminium Co. Ltd. v. Thane Municipal Corporation - 1991 (55) E.L.T. 454 (S.C). In the said judgment it has been held, points out the Id. JDR that the conditions precedent were not directory and observance thereof was necessary for grant of the benefit in sales tax.

Similarly, he submits that admissibility of Modvat credit was dependent on issue of correct invoice as laid down in the relevant Central Excise rules and therefore the original authority rightly denied the benefit of Modvat credit for lack of those particulars and that lacunae in the invoices could not be rectified later on according to him. He therefore, submits that an important question of law arises in the present appeal whether the particulars of the invoice could be supplied later on for the purpose of entitling the respondent to Modvat credit.

3. Opposing the contention Id. Advocate Shri J.S. Agarwal submits that the invoice originally issued contained all the relevant particulars except some minor particulars which were later on supplied. Therefore, the lack of particulars given in the original invoice issued by the Stock Yard of IISCO was correctly utilised for taking the Modvat credit. He submits that the Tribunal's decision relied upon by the Id.JDR has no application in the facts and circumstances of this case inasmuch as in that case the defect continued and the defect was not removed as it has happened in the present case. As regards reliance placed on Apex Court's judgment (supra), he submits that it is a case relating to the sales tax and has no bearing here. Therefore, it was found by the Apex Court that non-observance of condition was necessary for availment of the benefit of the sales tax. That means, in other words, that the condition precedent for availment of benefit of sales tax was not directory as pleaded by the appellants therein but was a mandatory condition and consequently he submits that it has no application here because some minor particulars were missing in the first instance which were made good later on otherwise all the other particulars were mentioned in the invoice.

4. I have carefully considered the pleas advanced by both the sides and I do not find that there is much substance in the appeal of the revenue. The cases relied upon by the Id. JDR has no application to the facts and circumstances of this case as rightly distinguished by the Id. Advocate for the respondents. Consequently while admitting the appeal, I reject the same in view of the foregoing discussion.