

Commissioner of Central Excise Vs. Integrated Caps (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-30-1998

Reported in : (1999)(112)ELT969TriDel

Appellant : Commissioner of Central Excise

Respondent : integrated Caps (P) Ltd.

Judgement :

1. This appeal from the Revenue was argued by Shri Y.R. Kilania, Id.DR. Shri D.S. Malik, Id. Advocate represented the respondents.

2. These proceedings are confined to the demand-cum-show cause notice dated 30-9-1994 issued to the respondents whereby Modvat credit taken to the extent of Rs. 1,22,197.38 was sought to be denied on the observation that the credit was taken on the strength of gate passes issued on or before 31-3-1994, but endorsed thereafter thereby making the documents not admissible in terms of Notification No. 16/94-C.E.(N.T.), dated 30-3-1994. The Assistant Commissioner confirmed the demand. The Commissioner (Appeals) held that the assessee's contention that the endorsed gate passes were only a secondary evidence and that the main evidence consisted of invoices, issued by the dealers in terms of Notification 15/94-C.E. (N.T.), which were admissible documents, was correct. On allowing the appeal, the present appeal has arisen.

3. In the appeal memorandum, it is claimed that in terms of Notification No. 16/94, the gate passes endorsed after 1-4-1994, were not valid documents and that the

Commissioner had erred in relying upon the judgment of the Tribunal in the case of Moosa Haji Patrawala v.C.C.E., Mumbai-I (Order Nos. 44-45/96-WRB, dated 24-1-1996) 1996 (83) E.L.T. 620 (Tribunal) inasmuch as the Tribunal filed a reference application before the High Court on the very point of law arisen out of the said order. It was, further, claimed that the assesseees at the time of original proceedings had not referred to any invoice at all.

4. I have carefully considered the rival submissions and the copy of the show cause notice produced by Shri Malik, Id. Advocate.

5. The show cause notice in Annexure-I, apart from indicating the details of the gate passes also furnishes the details of bills/invoices given by the dealers. In the original proceedings, the Assistant Commissioner has recorded the submissions of the assesseees on the invoices prescribed under the Notification No. 15/94, but has not referred to them in his findings. When the show cause notice itself takes cognizance of the invoices, it is futile for the Appellant Commissioner to say that the assesseees had not placed reliance thereupon.

6. I also find that the Commissioner, apart from stating that the endorsed gate passes were an additional evidence, has not discussed their value in the proceedings. Therefore, the Appellant Commissioner is wrong in stating that he had wrongly relied upon the ratio of the cited judgment of the Tribunal.

7. In a number of judgments, it has been held that the ratio of the cited judgment would continue to apply in spite of a reference having been made to the jurisdictional High Court.

8. Therefore, the assesseees in this case were capable of taking credit either on the strength of the endorsed gate passes or on the strength of the invoices received. I, therefore, find no merit in this appeal and dismiss the same.

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