Commissioner of Central Excise Vs. Choice Copier (P) Ltd.

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SooperKanoon Citation : sooperkanoon.com/14688

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-18-1998

Reported in : (1999)(107)ELT565TriDel

Appellant : Commissioner of Central Excise

Respondent : Choice Copier (P) Ltd.

Judgement :
1. The Collector in the impugned order dealt with two situations. In the first situation the contest was as to the admissibility of Modvat credit on the strength of a certificate issued by MMTC as regards payment of additional duty of customs. The second issue in contest was invoice issued by a trader who was not registered. These two separate contested issues were dealt with by the Assistant Commissioner in a common order. The Commissioner (Appeals) also disposed of both these issues vide the single impugned order. Dealing with the second contested invoice i.e. invoice No. 6125, dated 1-7-1994, issued by the M/s. Bansal Trading Co., he held that by virtue of the issuing trader subsequently having got himself registered, in terms of Board Circular No. 76/76/94-CX, dated 8-11-1994, the invoice became eligible document.

Against this order the Revenue had filed two appeals. I have compared the appeal memorandum in appeals in E/1356 and E/1357/98-NB. Both appeals speak of the Commissioner's decision holding the certificate issued by MMTC as a valid documents. When this was pointed out to the learned Departmental Representative, he fairly conceded that the Revenue not having raised a contest on the second invoice, there was no need to file two appeals.

2. The following discussion therefore pertains to Appeal No.E/1356/98-NB alone.

3. The document in contest is the certificate, dated 20-5-1994 issued by the MMTC. It gives quantity sold to the present respondents, reference to the delivery challan, gives the reference to the Bill of Entry under which parent consignment was cleared. It quantifies the countervailing duty paid on the parent consignment and also gives the prorata countervailing duty quantum on the consignment sold to the present respondents. The delivery challan reflects the quantity. The challan number matches the one given in the certificate.

4. Notification No. 16/94-C.E.(N.T.) prescribed such certificates issued by the MMTC as the valid documents. However, as learned DR pointed out the proviso to the notification extended the facility only where the certificate have been issued before 1-4-1994. The present certificate, dated 20-5-1994 obviously does not qualify for the benefit of this notification. However, I find that the learned Consultant is correct in maintaining that the two documents put together satisfied the prescription of Notification No. 15/94-C.E. (N.T.). The certificate had been issued by the Importer namely MMTC and particulars as required are shown. It may be that the particulars are not in the sequence or order as stipulated in the notification but the certificate and the challan together show all the particulars required by the notification.

Therefore if even the Commissioner had placed reliance wrongly on Board Circular No. 76/76/94-CX, dated 8-11-1994 his order in extending the benefit as per this discussion cannot be faulted.

5. Finding no merit in this appeal I dismiss the same. Appeal No.E/1357/98-NB stands dismissed as infructuous.