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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Mar-26-1999

Reported in : (1999)(66)ECC230

Judge : S Peeran, A T V.K.

Appellant : Electronic Calculators and

Respondent : Central Excise

Judgement :

1. This appeal arises from Order-in-Appeal No. 144/97 dated 24.4.97 confirming the duty demand of Rs. 1,69,686.81 BED and Rs. 8482.11 with regard to the clearances made during April '90 to October '90 under Rule 57-1(2) of Central Excise Rules read with the provisions of Section 11-A of the Central Excise and Salt Act, 1944.

2. The appellants had reversed Modvat credit of Rs. 25,275.30. In the Order-in-Original the Deputy Commissioner has given deductions to these amounts. The show cause notice had alleged that the appellants had cleared the inputs in which they had availed Modvat credit without obtaining prior permission of the jurisdictional Superintendent of Central Excise and without filing classification list for clearance of the inputs. It also alleged that for such clearances, duty as computed was required to be deposited.

3. The appellants had contended that they were manufacturers of Electronic Cash registers, its parts and accessories falling under Chapters 8470 and 8473 respectively and Electronic Weighing Scale, its parts and accessories falling under Chapter 8423. They had stated that they have not availed Modvat credit on all items indicated in the show cause notice, that the rate of duty payable is 10% and 5% respectively and that they had debited appropriate duty of BED of Rs. 25,275.30 and SCD 1263.73 under RG 23A Part-11 Sl. No. 231 dated 19.3.91. They also submitted that the goods were all non-Modvat items purchased and sold by them without any manufacturing process along with their main item manufactured by them. They had stated that as they had not taken any Modvat credit on this bought out items which were supplied by them to the customers, therefore, the question of demanding duty on them did not arise. However, this plea although it has been recorded in the impugned order, but the same has not been dealt with and hence the appellants are aggrieved.

4. Learned Counsel points out that no duty can be confirmed on bought out items which were supplied separately to the customers and on which no Modvat has been taken by the appellants themselves. In this regard, he relies on the following judgments: 5. He also points out that they had substantially complied with all the provisions of law and for procedural violation, the Modvat cannot be denied. He also refers to Notification No. 9/93-CE (NT) dated 1.11.93 which is having retrospective effect, being clarificatory one and cites the following cases:Super Cassettes Industries Ltd. v. CCE 6. Learned Advocate also relies on the following judgments, that benefit should not be denied for procedural infirmity nor penalty imposed:ELT (Tri.) Ashwin Vanaspathi Industries Pvt. Ltd. v. CCE 7. Learned DR points out that a verification is required to be done at the factory on the aspect pleaded by the appellants. However, he submits that the order was a speaking one and does not require for any interference.

8. On a careful consideration of the submissions, I notice that the point raised by the appellants has not been dealt with by the authorities below. There is no finding as to whether the demand is being claimed on the non-Modvatable items and bought out items which were cleared separately to their customers. This aspect of the matter requires thorough scrutiny and which can be done only by the original

authority. The original authority has not given any finding on their submissions except to record it.

9. In view of the order being non-speaking, the only course to adopt is to set aside the impugned order and remand the matter to the original authority for de novo consideration. The original authority shall give a hearing to the appellants and re-consider all their pleas and scrutinise all the documents produced by them and decide the case in the light of the judgments cited by the appellants. The original authority shall give a speaking order.

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