SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Collector of Central Excise Vs. Sai Electricals

Collector of Central Excise Vs. Sai Electricals

SooperKanoon Citation : sooperkanoon.com/16754

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-15-1999

Reported in : (2000)(115)ELT627TriDel

Appellant : Collector of Central Excise

Respondent : Sai Electricals

Judgement :

1. Question posed in the subject Reference Application filed by the Commissioner, Central Excise, Meerut-I is as follows :- "Whether Modvat credit can be allowed on declaration not filed with the Assistant Commissioner having jurisdiction over the assessee unit as per provisions of Rule 57G(1) of Rules." Before I deal with the aforesaid question, it is appropriate to' set out the facts of this case and the findings of the Tribunal. In this connection, I refer to paras 1, 2, 5 & 6 of Tribunal's order.

2. It is now urged by the ld. JDR Sh. S. Ramanathan that Rule 57G(1) mandates that a declaration has to be filed with the Assistant Commissioner and a dated acknowledgement is required to be taken from him. Therefore, the entire procedure followed by the respondent in this case is wrong. Tribunal's order, therefore, raises an important question of law as mentioned above.

3. Opposing the contentions, ld. Advocate Sh. Surinder Mullick submits that a declaration was duly filed by the respondents herein before the Revenue authorities and assessee normally does not know as to who is the proper officer

with whom the declaration is to be filed. He is normally dealing with the range office. He, therefore, filed the declaration with the Superintendent's office. If the Superintendent felt that he was not competent to receive the declaration, he should have returned it rather than giving a dated acknowledgement of the said declaration. Ld. Advocate, therefore, submits that in the aforesaid facts and circumstances of the case, the declaration filed by the respondents under Rule 57G has been found to be valid. Once a declaration is found to be valid Modvat credit cannot be denied. That is what has been precisely held by the Tribunal. Therefore, it is only on the basis of appreciation of facts and circumstances in this particular case that the Tribunal has held that the declaration made to the Revenue by the respondents in this case is valid. It is not in the generality of cases that the Tribunal has held that declaration filed with a Superintendent in all circumstances will be a valid one.

He also pointed out that the question framed as mentioned above is a misleading one. It gives an impression as if no declaration at all was filed by the respondents whereas the fact remains that the declaration was filed with a Superintendent under the concerned Asstt. Collector.

He, therefore, prays for dismissal of the Reference Application.

4. In his rejoinder, ld. JDR Sh. Ramanathan submits that ignorance of law is no excuse since the provisions of Rule 57G direct an assessee to file a declaration with the concerned Asstt. Commissioner, those provisions are mandatory, and therefore, a breach of that will lead to denial of Modvat credit.

5. I have carefully considered the pleas advanced from both sides. I observe, as rightly pointed out by the ld. Advocate, that in the facts and circumstances of this case, the declaration filed by the respodents to the Revenue has been found to be a valid declaration and not in general that any declaration filed with the Superintendent will be a valid one. The circumstance which has led the Tribunal to hold the validity of the declaration in this case are as follows :- (i) The concerned Superintendent was under the competent Assistant Commissioner.

(iv) Superintendent did not return the declaration for filing it with the Assistant Commissioner.

Keeping in view the aforesaid facts and circumstances, the Tribunal held as it did in its order dated 13-4-1998. I do not think that any question of law arises in the facts and circumstances of this case. The decision of the Tribunal is essentially an appreciation of the overall facts and circumstances of this case. Hence, I dismiss the Reference Application.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com