

Commr. of Central Excise Vs. KevIn Chemicals

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-07-1999

Reported in : (2000)(68)ECC295

Judge : J Srinivasamurthy

Appellant : Commr. of Central Excise

Respondent : KevIn Chemicals

Judgement :

1. The department in this appeal, as appellant, has sought for the stay of the impugned order of the Commissioner (Appeals), Central Excise & Customs, Ahmedabad, wherein, the Order-in-Original confirming the demand of Rs. 33,105 and allowing the Modavt credit of Rs. 27,210 is set aside.

2. The grounds on which the stay of the impugned order is sought for are, that on going through the invoice which shows that earlier 'Serial number for pre-authentication' was given the number 000914 which is cancelled and the No. 000314 was printed at the right bottom in the invoice. Invoice-cum-challan No. 240/95-96 dated 24.7.95 was given after preparation of the said invoice as the said Sr. No. was not found on the carbon copy on the reverse of the invoice and the same had been handwritten subsequently. In the other invoice Sr. No. of pre-authentication had been tempered by converting the earlier Sr. No.000642 to Sr. No. 000238. The actual invoice No. 164/95-96 was carefully handwritten without registering carbon impression on the obverse side of the invoice, which shows that

the invoice-cum-challan number had been subsequently written. The possibility of planned fraud cannot be denied in such cases. According to the rules, Sr.No. of the invoice is required to be mentioned and not the Serial Number for pre-authentication. The respondents have tried to misguide the Appellate Authority that the invoices bore printed serial number which were at the bottom of the invoices on the right-side corner. According to Rule 52A(6) of the Central Excise Rules, each invoice must bear printed serial number running for the whole financial year beginning on the 1st April of each year.

3. Heard the Ld. JDR Shri K.L. Ramteke for the applicant Commissioner.

The respondents remained absent in spite of notice, without any communication or representation.

4. I have gone through the impugned order and the Order-in-Original in the instant case. The respondents had taken Modvat credit of Rs. 60,135 wrongly as the numbers are not pre-printed and the destination given in the invoice is not factory premises of the respondents. After issuing show cause notice and considering the reply, the Asst. Commissioner of Central Excise, Rajkot has observed that the invoice numbers are not pre-printed in respect of invoices mentioned at serial No. 1 to 3 of Annexure 'A' to show cause notice and the respondents have not given proper defence, and so it is confirmed. Regarding the other two invoices at Sr. No. 1 and 2 of Annexure-A to show cause notice, the serial numbers are handwritten and so they are invalid for taking Modvat credit. Regarding Sr. No. 3 of Annexure-A to show cause notice, the serial number is correctly marked by printing machine and the Modvat credit is correctly taken. Regarding the destination, the invoice indicated the office address of the respondents. But the respondents had produced the xerox copy of the challan No. 1444 and transport receipt No. 3387 which mentioned that the goods had been received in the factory premises. In the absence of any allegation that the goods have not been received in the factory premises and not utilised in the manufacture of final product, it was held that the Modvat credit was taken correctly.

5. In the impugned order, the contention of the respondents before the Commissioner (Appeals,) was that on the invoices serial numbers are printed at

the bottom of the invoices on the right hand side, and they are 000238 and 000314 which compliances the requirement of law. In paragraph 6 of the order, the Commissioner (Appeals) has observed that the disputed invoices contain a specific column where the pre-authentication is done and in that column itself the serial number for pre-authentication is mentioned, in the top portion of invoice, there is no column for giving serial number. So he has set aside the order of the Asst. Commissioner.

6. From the above, it is clear that there is a variance of the lower authorities in the approach. The conclusion of the Commissioner (Appeals) is altogether different than the one contended by the respondents before him. The impugned order is prima facie not a correct order. The balance of convenience lies in favour of the appellant. The respondents have not controverted the case of the department in the stay application. So the stay application is allowed and the impugned order is stayed, pending disposal of the appeal.

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