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Commissioner of Central Excise Vs. Hill Packaging Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-24-2000

Reported in : (2000)(118)ELT56TriDel

Appellant : Commissioner of Central Excise

Respondent : Hill Packaging Ltd.

Judgement :

1. This reference application has been filed by the Revenue. Question sought to be referred, according to the petitioner, arises from the decision of this Tribunal in Final Order No. A/377/97-NB(S/M), dated 20-5-1997 1998 (98) E.L.T. 543 (T). Short facts necessary for the disposal of this petition are as follows.

2. Respondent claimed Modvat credit of Rs. 2,66,547.94 on the inputs used by them in the manufacture of finished product. According to the department, credit was wrongly taken. The adjudicating authority thereupon disallowed the above credit and imposed a penalty of Rs.10,000.00. It was confirmed by the appellate authority as well. On a second appeal to the Tribunal, the learned single Member allowed the appeal with consequential relief to the respondent/manufacturer. In allowing that appeal, reference was made by the learned Member to the decision in the case of S.B.S. Organics Pvt. Ltd. v. Collector of Central Excise and Customs, 3. Revenue in this petition takes up the stand that decision of the learned single Member in Appeal No. E/200/96-NB is against the decision of another Member of the South Regional Bench, Madras in Commissioner of Central Excise v. Sree Gopal Krishna Polly Industries, 1996 (84) E.L.T. 235.

4. A quantity of 9 metric tonnes of inputs manufactured by IPCL was sent to their depot in New Delhi. From the depot in New Delhi, it was forwarded to Gaura Enterprises, Dehradun by making an endorsement in the gate passes. Gaura Enterprises sold the goods in two lots to the respondent, two metric tonnes in the first consignment and seven metric tonnes in the second. These sales were also endorsed in the gate passes. On the endorsement in the gate passes, Modvat credit was claimed by the respondent. This was not approved by the adjudicating authority and the appellate authority. Before this Tribunal, learned D.R. took up the stand that the manufacturer should have obtained subsidiary gate pass and in having not taken it, he is not entitled to Modvat credit. While rejecting this stand taken by the department, this Tribunal took note of the fact that the department itself has agreed upon three endorsements being made in the gate passes. In the instant case, endorsements made were only two and not three. So, two endorsements made in the gate passes will not in any way go against any rule disentitling the respondent from claiming Modvat credit. The decision referred to by the Tribunal in this reference application, namely, C.C.E. v. Sree Gopal Krishna Polly Industries, 1996 (84) E.L.T.235 deals with endorsement in subsidiary gate passes. That cannot have any relevance to the issue on hand.

5. In the circumstances detailed above, no question arises for referring it to the High Court for its decision. The petition is devoid of any substance. It is accordingly dismissed.

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