

Commissioner of C. Ex. Vs. Spectra Electronics (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-23-2000

Reported in : (2000)(119)ELT672TriDel

Appellant : Commissioner of C. Ex.

Respondent : Spectra Electronics (P) Ltd.

Judgement :

2. The issue relates to Modvat credit. The Assistant Commissioner has denied the benefit on the ground that serial number of invoice is written with hand observing that each invoice shall be Printed Serial Number running from April and that the condition cannot be relaxed or dispensed with being statutory requirement.

3. On the other hand, the Commissioner (Appeals) has decided the issue in favour of the party following the ratio of the decision of the Tribunal in the case of Larsen & Toubro Ltd. v. C.C.E., reported in 1994 (72) E.L.T. 948 (Tribunal).

4. When the matter was called none appeared on behalf of the respondents. However, they have requested to decide the case on merits submitting that the issue involved in this case has been decided in favour of the assessee in a series of cases including Hindustan Radiators Co. v. C.C.E., Jaipur, Nahar Spinning Mills Ltd. v. C.C.E., Indore, reported in 1998 (97) E.L.T. 127 (Tribunal) and Bengal Safety Industries, reported in 1997 (92) E.L.T.5. Shri Y.R. Kilania while reiterating the grounds taken by the department submitted that printing serial number on invoice is a statutory requirement. Even if it is considered as a procedural

requirement, the Supreme Court in the case of Indian Aluminium Company Ltd. v. Thane Municipal Corporation, reported in 1991 (55) E.L.T. 454 (S.C.) has held that non-observance of even a procedural condition is not to be condoned if likely to facilitate commission of fraud and introduce administrative inconvenience possibility of which is very high here in the instant case of the party.

6. I have carefully considered the matter. I find that the ratio of the decision referred to by the departmental side is not applicable to the facts of this case. In a series of cases, the Tribunal has taken the view that non-printing of serial number on the invoice or writing serial number in hand is not a serious offence which cannot be cured and lapse is merely a technical lapse. If Modvat credit is otherwise admissible, it cannot be denied on the ground that serial number on invoice is written in hand. In view of the consistent view of the Tribunal, I do not find any infirmity in the impugned order and in the result, the appeal filed by the department is hereby dismissed.

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