

Commissioner of Central Excise Vs. Prem Cables Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-29-2000

Reported in : (2001)(127)ELT254TriDel

Appellant : Commissioner of Central Excise

Respondent : Prem Cables Pvt. Ltd.

Judgement :

1. This is an application filed by the Revenue to rectify the mistake on the ground that mistake has crept in with reference to the Final Order No. A/482/97-NB, dated 10-3-1997 1999 (109) E.L.T. 727 (Tribunal).
2. Arguing for the Revenue Shri Sumit K. Das, Id. JDR pointed out that the Tribunal has proceeded to pass an order on the ground that Collector has changed the classification while deciding the issue with reference to the Modvat credit. In this context he drew our attention to the finding portion of the order "The Collector did not have any authority to arbitrarily change the classification approved by another Collector, leave alone to demand duty calculated on the change of such classification".
3. While referring to the finding given by the Commissioner in this order he pointed out to the relevant portion wherein it was observed that the department's allegation is that the goods received were not aluminium plates but were unwrought aluminium castings. This is the basic question which is required to be decided in the case. In view of the test report of Malviya Regional Engineering College, there

is no doubt that the goods so received were unwrought aluminium casting under gate passes issued by two Ahmedabad parties and endorsed by M/s. P.G.Foils in favour of M/s. Prem Cables Pvt. Ltd. As the inputs have been received by the assessee and used in the manufacture of final products are unwrought aluminium castings the assessee cannot take the credit on the basis of gate passes where description of the goods is shown as aluminium plates. The assessee is entitled to take the credit of duty paid on the inputs received by him. He also referred to the findings of the Commissioner wherein it was held that the assessee has received unwrought aluminium but the duty paying documents show the description as aluminium plates. No assessee can take credit on the goods which are not covered under the duty paying documents. As the assessee has not produced any duty paying document about the goods actually received by them, they are not entitled to take any credit. Shri S.K. Das submitted that since there was a factual error in appreciating the facts and circumstances and the Tribunal arrived at the conclusion that wrong classification has been done by the Commissioner and infact that is not so, the matter requires to be rectified.

4. On the other hand, Shri K.K. Anand, Id. Advocate appearing for the respondents before us submitted that no mistake has crept in the order.

The way in which it was argued by the DR amounts to review of the order and review power is not vested with the Tribunal. He also submitted that the order passed by the Tribunal is in conformity with the charges levelled in the show cause notice. In the show cause notice there was no charge that the assessee has received the goods different from the goods referred to in the duty paying documents. He also relied upon the decision of the Tribunal reported in 2000 (118) E.L.T. 77 (Tribunal-LB) wherein it was held that the decision which has been validly made by a duly constituted Bench is not open for review on the alleged ground that according to the applicants the decision was erroneous on fact or law.

5. We have carefully considered the matter. We find that even the Apex Court in some of the cases have held that if the point has not been considered properly it is appropriate that matter should be reopened.

There is some force in the arguments advanced on behalf of the Revenue that the Tribunal has not taken into consideration the facts/evidence as it was referred to in the order passed by the Commissioner. In this order we are not inclined to express any opinion on the merits of the case at this stage, however, we feel that it is appropriate that matter should be reopened and matter to be heard, afresh. Accordingly, in the facts and circumstances and in view of the submissions made by both sides earlier order is recalled and matter is posted for regular hearing on 8th November, 2000 before the regular bench. Application is allowed in the above terms.

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