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

Commissioner of Central Excise Vs. Okasa Ltd.

Commissioner of Central Excise Vs. Okasa Ltd.

SooperKanoon Citation : sooperkanoon.com/19464

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-17-2000

Reported in : (2001)(127)ELT184Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Okasa Ltd.

Judgement :

1. These appeals are against the orders of the Commissioner (Appeals), overruling the findings of the Assistant Commissioner, that the assessee was not entitled to take Modvat credit on invoices which were not issued in accordance with the rules for one or more of the following reasons; they were not issued by a registered dealer; they did not show the mode of transport of the goods or the value of the consignments received by the dealer from the manufacturer of which the consignment formed a part.

2. We are not able to accept the reasoning of the Commissioner (Appeals), when he says that the failure of the dealer to comply with these requirements, contained in trade notice 57/94, cannot have the consequence of credit being denied. The trade notice prescribes these particulars and provides that the failure to include them would entail "penal action". We are not able to agree with him that "penal action" only means a penalty and not action resulting in Modvat credit being denied. The consequence of a document not being valid for purposes of credit would be that such credit is not available. He also notes that these documents were issued shortly after the new procedure of issue of invoices was introduced.

While the Departmental Representative emphasises the reasoning in the appeal, he says that Notification 32/94 made registration of dealers compulsory from 4-7-1992 and that Rule 57G(2) provides that credit shall only be taken on valid duty paying documents. As to the first point, the Board in its circular 76/76/94-CX, dated 8-11-1994 has clarified that up to 31-12-1994 unregistered dealers who were subsequently registered will be accepted.

The evidence of subsequent registration on 15-7-1994 of the dealer who issued these documents was produced.Jenny Plywood Industries Ltd v.CCE, 1997 (96) E.L.T. 606 has held that absence of the time of removal in the invoice is a defect which can be remedied.

4. We are not able to see what object will be achieved by putting the time and date and mode of transport now. There is no dispute that the goods have in fact travelled up to the respondent's factory or had been utilised therein for manufacture. The object of putting these and other particulars in the invoice is to prevent misuse of the invoice by using the same document to cover more than one consignment, one or more of which may be for goods on which duty has not been paid. In these circumstances, we are of the view that these minor lapses, which should be condoned.

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