Cosmo Ferrites Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-04-2000

Reported in : (2001)(127)ELT605TriDel

Appellant : Cosmo Ferrites Ltd.

Respondent : Commissioner of Central Excise

Judgement :
1. The issue involved in this appeal is whether M/s. Cosmo Ferrites Ltd., are eligible to take Modvat Credit of the Additional Customs Duty paid subsequently on demand by the Department.

2. Shri J.P. Kaushik, Advocate, submitted that the appellants imported certain goods on payment of concessional rate of duty; that as they could not produce the end use certificate, Assistant Commissioner of Customs Bombay, directed them to deposit the differential duty which was deposited by them; that subsequently on the basis of the certificate issued by the Bombay Custom House, they had taken the Modvat credit of the countervailing duty paid by them. The Assistant Commissioner, Central Excise disallowed the credit holding that said certificate was not issued under Rule 57A or 57E of the Central Excise Rules; that the certificate had been issued for non-compliance of procedure and is in the form of a penalty; that Commissioner (Appeals) also under the impugned Order rejected their appeal holding that the order of the Assistant Commissioner of Customs for depositing the duty was appealable against which no appeal was filed and the certificate had been issued for non-compliance of procedure and was in the shape

of a penalty. The ld. Advocate, further, submitted that the duty has been paid by them under Section 28 of the Customs Act as they could not fulfil the condition specified in the Notification and as the differential duty has been paid by them, they are eligible to take the Modvat Credit under Rule 57E of the Central Excise Rules.

3. Shri R.C. Sankhla, ld. DR, reiterated the findings as contained in the impugned Order.

4. I have considered the submissions of both the sides. It is not in dispute that the differential custom duty was paid by the appellants on the basis of the demand notice issued under Section 28 of Customs Act as the Appellants could not produce end use certificate. Payment of differential duty for non-fulfilment of the condition of the Notification cannot be regarded as a penalty. As the differential duty has been subsequently paid by the Appellants they are eligible to take the credit of the duty as under the provisions of Rule 57E of the Central Excise Rules. Accordingly I allow the appeal filed by the appellants with consequential relief, if any.