Commissioner of Central Excise, Vs. M/S. Mewar Polytex (P) Limited

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SooperKanoon Citation : sooperkanoon.com/20672

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-01-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S. Mewar Polytex (P) Limited

Judgement :

1. Revenue filed this application for referring the following question of law: "(i) Whether goods transferred by M/s. IPCL, Jaipur Depot of the manufacture to their own stockist are internal matters of M/s. IPCL & writing on the back of gate pass transferring goods to stockist is not an endorsement.

(ii) Whether Board's Circular prescribing gate pass as duty document for availing of credit issued under Rule 57G(2) of the Central Excise Rules, 1944 is an extended piece of legislation & whether the gate pass having more than two endorsement can be treated as a valid duty paying document".

3. The contention of the Revenue is that when Board Circular prescribes only two endorsements in respect of Gate passes, therefore, the question of the Tribunal allowing the MODVAT credit on the Gate passes which are endorsed more than twice contrary to the provisions of the Board Circular. The Tribunal in the case of Commissioner of Central Excise, Jaipur Vs. Sunrise Technofab Pvt. Ltd., reported in 1997 (90) E.L.T. 468 (Tribunal) rejected the request of the Revenue to referring the same question of law. The Tribunal held as under:- "In their judgment in the case of S.B.S. Organics (supra), the Tribunal had held that the instructions as to the permissible number of endorsements were purely administrative in nature and

the facilitation could be extended further as long as there was no danger to the revenue. The text of the two instructions, itself, shows that the instructions do not receive their power from the provisions of Rule 57G. The Rule specifies as gate pass as an eligible document. A gate pass would remain a gate pass whether or not it is endorsed subsequently. An endorsed a gate pass does not become a separate document which has to be declared to be an eligible documents in terms of the residual power conferred on Board under the said Rule. Therefore, the claim made in the reference application is based on wrong appreciation of the law. I, thus, find that the applicant has failed to bring out any question law in the application. The same is, accordingly, dismissed." 4. In view of the earlier decision of the Tribunal, the Reference application is dismissed.