Org Systems and Dde Org Systems Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-28-2001

Judge : S T Gowri

Appellant : Org Systems and Dde Org Systems

Respondent : Commissioner of Central Excise

Judgement :

1. These appeals are taken up for disposal, after hearing the parties on stay application and after waiving deposit.

2. In the common order impugned in these appeals, the Commissioner (Appeals) has confirmed the orders of the Dy. Commissioner disallowing modvat credit taken by each of the appellants on the ground that the inputs on which the credit was taken were not utilised in the manufacture of goods, but in processes not amounting to manufacture and hence not requiring payment of duty, consequently imposing penalty under Section 11AC of the Act and demanding interest under Section 11AB.3. The common counsel for both the appellants does not dispute that the credit was wrongly taken in both cases, saying that it has already been reversed, or question before me the penalty under Rule 173Q. The credit was wrongly taken by ORG Systems prior to April 1994 and by DDE ORG Systems Limited between May 1994 and July 1997. It is his contention that the provisions of Section 11AB and 11AC will not apply in the first case and only for a limited period for the second. The departmental representative emphasises the reasoning in the Commissioner (Appeals) order.

4. By a number of decisions the Tribunal has consistently held that provisions of Section 11AC will not apply in cases where the period for which duty demanded is prior to its enactment in September 1996 (See Marcandy Prasad Radhakrishna Prasad Pvt. Ltd. v. CCE ; and Lakshmi Packaging (P) Ltd. v. CCE 5. The Commissioner (Appeals) relies on a clarification of the Board that the provisions of this section will apply in cases where show cause notices have been issued after its enactment of the section. I do not find any reasoning in the circular. In any event, the Board's circular cannot have precedence over the decisions of the Tribunal. The Explanation below Section 11AB itself provides that it will only apply in cases where the duty becomes payable after its enactment. The imposition of penalty on ORG Systems therefore cannot be supported.

6. Penalty on the other appellant will have to be limited to the period subsequent to September 1996. Therefore clearances for a period of about 10 months between September 1996 and July 1997 will attract the penalty. I therefore reduce the penalty imposed on this appellant to Rs. 1 lakh.