Commissioner of Central Excise, Vs. M/S. Raymond Ltd.

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SooperKanoon Citation : sooperkanoon.com/22550

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-27-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S. Raymond Ltd.

Judgement :

1. The appellants availed modvat credit of Rs. 7003/- on 30.8.94 on the strength of invoice No. 180 dated 26.8.94 issued to M/s Chemo Pulp Tissues Ltd., Ghaziabad. The also availed modvat credit of Rs. 8397/- and Rs. 17,183/- on the basis of invoice No. 1302 dt 5.7.94 and No.1304 dated 9.7.94 respectively issued by the dealers M/s A.R. Sale Agency. The appellants were issued show cause notice dated 27.2.95 calling upon them to show cause why the modvat credit in respect of the three notices should not be denied to them.

2. On considering the reply of the appellants, the Assistant Commissioner of Central Excise Division, Chandigarh vide his Order dated 28.6.96 confirmed the demand of Rs. 32,583/- under Rule 57 I of Central Excise Rules, 1944.

3. The party filed an appeal but the Commissioner (Appeals), Chandigarh vide his Order dated 13.6.2000 dismissed the appeal of the party holding the findings arrived at by the Original Authority.

4. The present appeal is against the above order of Commissioner (Appeals). I have heard Shri Gagan Kohli, Adv. for the appellants and Shri M.D. Singh, SDR for the respondents. The Ld.Adv. for the appellants at the very outset submits that

he is not contesting the case relating to the modvat credit totally amounting to Rs.25580/- denied to the appellants on the ground that the same had been availed on the strength of the invoice issued by an un-registered dealer. He however, submitted that admittedly the modvat credit of Rs. 7003/- under the invlice No. 180 dated 26.8.94 issued by the manufacturer is denied only on the ground that the same is not availed on the strength of the duplicate copy of the invoice. It is contended that the modvat credit has been availed on the original copy of the invoice since the duplicate was lost in transit for which they had lodged an FIR with the Police. These facts are admitted in the Order-In-Original. Ld.Adv. for the appellants further placed reliance on the decision of Larger Bench of the Tribunal in the case of CCE New Delhi Vs Avis Electronics 2000(117) ELT-571(T) in para 6 of which it is held that a manufacturer who once takes credit of the duty paid on the inputs must produce the invoice before the jurisdictional officer to get it defaced. So the transit of the duplicate copy of the invoice is from the person who sold the inputs to the office of the concerned excise officer. In the course of this transit, if the duplicate copy of the invoice is lost, manufacturer should establish the same to the satisfaction of the concerned Assistant Collector. On the A.C.' satisfaction regarding loss of duplicate copy in transit, the manufacturer can take credit of the duty paid on inputs received in the factory on the basis of original invoice. In the light of these observations in the decision of the Larger Bench of CEGAT, Ld. Adv. for the appellants contends that the appellants are entitled to the modvat credit of Rs. 7003/- availed on the invoice issued by the manufacturer. Shri M.D. Singh, SDR for the revenue submits that there is no reference to the fact that modvat credit in respect of this amount is claimed on the strength of original copy and therefore, the same has been rightly denied to them.

5. I have carefully considered the submissions made before me. Since the claim of modvat credit for Rs. 25580/- has been abondoned by the appellants, the issue before me is in respect of modvat credit of Rs. 7003/- I find force in the submission that loss of duplicate copy while taking photo copy of the invoice is covered by the expression "loss in transit' as interpreted in the above cited extracts from the decision of the Larger Bench of CEGAT. However, there are no findings in the order in original with regard to these facts submitted before me, by the Ld. counsel of the appellants. Therefore, it is felt expedient that the matter is remanded to the

original authority to record his findings in the light of the observations of the CEGAT cited above. Accordingly the order passed by lower authority is set aside. The matter is remanded to original authority to re-consider the matter for the modvat credit of Rs. 7003/- The appellant shall be afforded reasonable opportunity of hearing before taking final view in the matter.

6. Consequently the appeal relating to the amount of Rs. 25580/- is dismissed as not pressed and it is remanded in respect of Rs. 7003/- in the above terms.