

Commissioner of Central Excise, Vs. M/S. Classic Electronics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-27-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S. Classic Electronics Ltd.

Judgement :

1. When the case was called none appeared on behalf of the respondents inspite of notice.
2. Revenue filed this application for rectification of mistake in the Final order passed by the Tribunal.
3. The brief facts of the case are that respondents availed the benefit of MODVAT credit on the strength of Gate passes issued prior to 1.4.94 and endorsed thereafter and the credit was taken before 3.6.94. The Tribunal in view of the decision in the case of Moosa Haji Patrawala Pvt. Ltd. Vs. Commissioner of Central Excise, Bombay-I, reported in 1996 (83) E.L.T. 620 (Tribunal) held that the endorsed Gate passes are valid duty paying documents.
2. Heard learned Departmental Representative and perused the appeal papers.
3. The contention of the Revenue is that now the Tribunal in the case of Balmer Lawrie & Co. Ltd. Vs. Commissioner of Central Excise, Kanpur, reported in 2000 (116) E.L.T. 364 (Tribunal) held that the endorsed invoices are not valid duty paying documents. Therefore, the final order may be recalled.

4. The issue before the Larger Bench was "Whether the endorsed invoice was a valid duty paying document or not" and the issue in the present appeal was "that the endorsed Gate passes after 1.4.94 were valid duty payment documents or not". So both the cases are on different facts.

5. Further, the Hon'ble Gujarat High Court in the case of Commissioner of Central Excise, Ahmedabad-I Vs. Gujarat Medcraft Pvt. Ltd., reported in 2001 (42) RLT 475 (Guj.) held that the endorsed Gate passes are valid duty paying documents upto 30.6.94. The Hon'ble High Court held as under : "The submission made on behalf of the department is that the gate passes were required to be issued before 1.4.1994 and also required to be endorsed before 1.4.94. We do not find from the language of the Rules anything to substantiate that the gate pass as were also required to be endorsed before 1.4.1994. The proviso clearly used the words "the documents have been issued before the 1st April, 1994 and the credit under the said rule has been taken on or before the 30th June, 1994". The rule making authority was conscious of the practice of endorsing gate passes and therefore, in column (3) it has clearly provided that "endorsed gate passes" were also to be construed as the documents prescribed for the purpose of availing of the benefit under the Modvat Scheme. The fact that the rule making authority also permitted the concerned parties to take benefit of the Scheme on or before 30.6.1994, in our view, substantiates the case of respondent assesseees that it was open to the assesseees to get the benefit of the gate pass which was endorsed after 1.4.1994 but before 30.6.1994." 6. In view of the above, I find no mistake apparent on record in the Final order. Hence the application is rejected.

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