Atul Painters Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-02-2001

Reported in : (2002)(147)ELT436Tri(Mum.)bai

Appellant : Atul Painters

Respondent : Commissioner of Central Excise,

Judgement :

1. The question for consideration in this appeal is the acceptability, for purpose of modvat credit of three invoices issued by Jagdish Agencies Pvt Ltd, Morbi and two invoices issued by Parekh Chemicals and Colour Company, Mumbai.

2. Neither of the two persons in question is the manufacturer. They had purchased the goods, and sold them to the appellant. The invoices were issued between May and July, 1994. Notification 16/94 issued on 30.3.1994, and effective from 1.4.1994 listed as acceptable documents, for the purpose of modvat credit, invoices issued by "wholesale distributor/dealer of a manufacturer who has bought excisable goods either from the manufacturer's factory or from the manufacturer's depot. Following issue of notice proposing not to accept these documents, on the ground that they did not conform to this description, the Assistant Collector passed orders denying the credit. He held that Jagdish Agencies Pvt Ltd was not the wholesale dealer or distributor of the manufacturer, but "merely authorised stockists." He found Parekh Chemicals & Colour Company to be "only authorised dealer of the manufacturer and not the wholesale dealer/distributor of the manufacturer." 3. On appeal from this order, the Commissioner (Appeals)

confirmed the Assistant Collector's finding except with regard to one invoice issued by Parekh Chemicals & Colour Company. Hence this appeal.

4. The departmental representative adopts the reasoning in the impugned order.

5. It is not possible for me to support the finding of the Commissioner (Appeals). The Assistant Collector accepts that Jagdish Agencies Pvt Ltd is an authorised stockist of the manufacturer at Morbi. This was also confirmed by a letter dated 23.3.1993 of the manufacturer. The counsel for the appellant rightly relies upon the general understanding of the term "stockist" as one who keeps the commodity in stock. There therefore need not be a conflict between a person being a stockist and a dealer. That the stockist purchased the goods in question from the manufacturer, and sold them to the appellant is not in dispute. Two of the invoices of 250 kilograms and the third one for 500 kilograms. The conclusion therefore inescapable is that Jagdish Agencies Pvt Ltd was a dealer of the manufacturer.

6. The Assistant Collector accepts that Parekh Chemicals & Colour Company is an authorised dealer of the manufacturer. It is not clear what he means by its not being a "wholesale dealer/distributor" of the manufacturer. In this case again the quantities are in wholesale, 100 kilograms and 300 kilograms. This supplier was also satisfied the requirement of being a dealer of the manufacturer. The decisions cited by the counsel for the appellant (CCE vs Monsanto Manufacturers Pvt Ltd 1996 (87) ELT 696, CCE vs Uttam Ind. Engg Pvt Ltd 1997 (89) ELT 87, & CCE vs Spun Tubes Ltd 1998 (103) ELT 52) also support this view.