indabrator Ltd. Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/22968

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-11-2001

Reported in : (2001)(77)ECC636

Appellant : indabrator Ltd.

Respondent : Commissioner of Central Excise,

Judgement :
1. Appeal is taken up for disposal with consent of both sides after waiving deposit.

2. The appellant imported components of machinery and cleared them after payment of duty on 27.3.97. The appellant discovered subsequently that there was short payment of duty, and by means of a post bill of entry paid this duty of Rs. 13,143/- on 1.8.97. The appellant used these goods in its factory, and therefore took modvat credit on 19.12.97 of the additional duty component paid on both occasions.

Notice issued to the appellant proposed to deny credit on the ground that it was taken beyond six months from the date of issue of the duty paying document, which it held to be 10.3.97, the date on which bill of entry was initially filed for clearance of goods. The Asst.

Commissioner [whose order has been confirmed by the Commissioner (Appeals)] found the notice to be correctly issued and denied the credit. Hence this appeal.

3. Counsel for the appellant does not dispute before us that the credit taken of the duty paid on he bill of entry initially filed for the clearance of the goods is unavailable in view of the provision of sub-rule 5 of Rule 57G. He however contends that credit of the duty paid subsequently by the post bill of entry was taken within six months and cannot be denied. He also contends that there were no mala fides and other circumstances favouring imposing penalty. The departmental representative adopts the reasoning in the impugned order.

4. We would not like to agree that the date of "issue" of the bill of entry is the date on which it is filed. On the date on which that document is filed, it had not become a duty paying document. it is only a document by which clearance of imported goods is sought to be obtained. It assumes its character as a duty paying document only after the duty is paid, which is inevitably after the bill of entry is submitted and amy often happen a considerable time after this date.

Even after such determination of duty, the bill of entry is not made available to the importer. The bill of entry only reaches his hands after the goods are cleared from the customs and the goods are delivered from the place of storage to the importer. However, for the purpose of this appeal, these discussions are only of academic significance.

5. The post bill of entry was required solely because of the short payment initially. That document is therefore to be considered a separate document, (although its filing was a result of first short payment) and therefore cannot be considered to have been "issued" on the date of which the first document was issued. It would be correct to say that the date on which the duty was paid on the post bill of entry is the date of its issue. There being no dispute that the credit of the duty paid on the post bill of entry was taken within six months of its issue, it was not correct to deny that.

6. We also do not find any scope for imposing penalty. Doubtless the appellant has taken credit that was not due; but we accept the submission of counsel for the applicant that this was done on its understanding of law, however, imperfect that the may have been. We therefore set aside the penalty on the appellant.