

Commissioner of Central Excise, Vs. Enpee Pharma (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-01-2001

Appellant : Commissioner of Central Excise,

Respondent : Enpee Pharma (P) Ltd.

Judgement :

1. The question for consideration in this appeal by the Commissioner is the validity for the purpose of modvat credit of the invoices issued by dealers, who on the date on which they issued them, were not registered, but subsequently registered prior to 31.12.1994. The notice issued to the respondent proposed denial of the credit on the ground that document issued by unregistered dealers were not valid for taking credit in the light of the provisions of notification 21/94. The Commissioner (Appeals) relied upon the contents of the circular No.76/76/94 dated 8.11.1994 which provided that an invoice issued by a registered person to its registration would be acceptable. he said that the Assistant Commissioner's reliance upon the fact that the invoice did not contain all the particulars specified in notification 15/94 and 16/94 was not justified as these were not the allegation in the notice.

2. The appeal contends that Board's circular dated 8.11.1994 only permits acceptance of an invoice issued by dealers who were subsequently registered, if the invoice fulfils condition contained in notification 15/94 and 16/94. This may, no doubt be true. But the Commissioner (Appeals) found that it is not the absence of these particulars on the basis of which the notice proposed denial of credit.

The notice only alleges failure on the part of the dealer to be registered. However, he has noted that the trade notice 51/94 dated 27.7.94 prescribing the details such as, mode of transport, time of removal, etc., was issued after these invoices were issued. In these circumstances I do not find sufficient justification to interfere.

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