Commissioner of Central Excise, Vs. Sterlite Industries (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-24-2001

Appellant : Commissioner of Central Excise,

Respondent : Sterlite Industries (i) Ltd.

Judgement :

1. This appeal by the department seeks to question the conclusion of the Commissioner (Appeals) that Sterlite Industries (India) Ltd., the respondent to this appeal, is entitled to take modvat credit on an authenticated photocopy of a gate pass.

2. The Commissioner has relied upon some unspecified instructions of the Board permitting such credit to be taken. The department's appeal contends the Board's instructions required a particular procedure to be followed, which the manufacturer had not followed. The reference in the department's appeal to a particular instruction contained in a letter is somewhat misleading. Instructions are contained in a circular 44/86-dated 29.10.1986 of the Board which provides that a circular of 1982 issued in relation to proforma credit under rule 56A.will apply to the modvat scheme.

3. The respondent is absent and unrepresented despite notice. The departmental representative is unable to produce the circular before us but produces the trade notice no. 192/82 of the Madurai Collector, which is evidently based on the circular. This trade notice provides that "in the case of loss of original gate pass, subsidiary gate pass/certificate of recovery of duty would be obtained from the

range Superintendent of origin to the consignor and presented to the jurisdictional range officer for necessary Action. Photostat copy of the documents, whether attested or not shall not be accounted (sic) for this purpose." 4. In the case before us, the credit was taken on photostat copy. Since the 1982 circular expressly prohibits taking of credit on photostat copies, the ground in the appeal that the requirements in 1982 circular have not been followed, therefore, has to be accepted.

5. The appeal is accordingly allowed. The Commissioner (Appeals)'s order relating to the gate pass is set aside and the order of the Assistant Collector restored.