Commissioner of Central Excise, Vs. Polychem Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-24-2001

Appellant : Commissioner of Central Excise,

Respondent : Polychem Ltd.

Judgement :

1. In the order impugned in this appeal, the Commissioner (Appeal) has concluded that the respondent to this appeal had lost the duplicate copies of the invoice issued by the manufacturer for the inputs that it received and permitted it to take credit on the duplicate copies.

2. The grounds in the appeal of the department challenging this order, that the Commissioner has not verified whether inputs were received or utilised in the factory of the respondent, is clearly an attempt to break fresh grounds. The show cause notice proposed to deny the credit only on the ground that it was taken on invalid documents. That is what the Asst. Commissioner has said. This ground cannot be permitted.

However, the other ground is that Rule 57G(2) permits credit to be availed on the basis of the original invoice where the duplicate was lost subject to the satisfaction of the Asst. Collector. Both sides agree that the trade notice which has been issued (to give effect to Rule 57G(2)) specifies conditions subject to which credit can be taken on the duplicate copy. The Commissioner (Appeals)'s order does not at all indicate whether the condition in the trade notice have been complied with. The rule itself does not prescribe the level of satisfaction of the Asst.

Commissioner. If the trade notice prescribed such a requirement, it ought to have been followed.

3. The appeal is accordingly allowed and the Commissioner (Appeals)'s order set aside and the matter remanded to the Asst. Commissioner. He shall after considering submissions, (along with evidence) that the respondent may make within two months from the receipt of this order pass orders on the subject in accordance with law.