

Commissioner of Central Excise, Vs. Noel Pharmaceuticals

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-19-2001

Appellant : Commissioner of Central Excise,

Respondent : Noel Pharmaceuticals

Judgement :

1. The appeal is against the order of the Commissioner (Appeals), reversing the order of the Assistant Collector that the assessee was not entitled to take modvat credit for the reasons specified in the three show cause notices which he adjudicated.
2. The Commissioner (Appeals) reproduces the relevant parts of the three show cause notices. The notices dated 16.1.1995 and 30.1.1995 proposed to deny credit on the ground that invoices show that the goods were "supplied second sale" and details of the first sale are not shown. The notice dated 4.1.1995 proposed denial of credit that credit had been taken on the basis of documents which were not prescribed.
3. The appeal advances as a ground for denial that the invoices do not contain particulars such as name and address of jurisdictional Collector, mode of despatch etc. Now, so far as the invoices are concerned, these were not the allegations in the notices dated 16.1.1995 and 31.1.1995. So far as these notices are concerned, therefore the appeal seeks to raise fresh ground and cannot therefore be considered.

4. Insofar as the remaining notice dated 4.1.1995 is concerned, the Commissioner (Appeals) has not dealt with this ground at all. He has only applied his mind with regard to the first two notices. I therefore think it appropriate to remand this matter to him for decision on the issues which are actually involved.

5. The appeal is therefore allowed in part insofar as it relates to the credit referred to in the show cause notice dated 4.1.1995 and otherwise dismissed. The Commissioner (Appeals) shall now decide the appeal with regard to that part remanded, in accordance with law.

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