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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-19-2001

Appellant : HipolIn Ltd.

Respondent : Commissioner of Customs and

Judgement :
1. After hearing stay applications, I find that the issue is covered and therefore with consent of both sides, proceed to take up the appeals, after waiving deposit.

2. The appeals are against the orders of the Commissioner (Appeals) confirming the orders of the Assistant Commissioner appealed before him that modvat credit was wrongly taken by the appellant, but setting aside the penalty that he had imposed.

3. I shall consider each of the grounds on which the credit has been denied. The first is that the credit of Rs. 5,12,865/- was taken on gate passes which were issued prior to 31.3.1994 to a person other than the appellant and thereafter endorsed in its favour. The Assistant Commissioner has relied upon the provisions of entry 10 of the table to notification 16/94 to say that this is not duty paying document. The Tribunal had before it the same issue for consideration in Moosa Haji Patrawala Pvt. Ltd. v. CCE 1996 (83) ELT 620. It concluded that no objection can be taken to raise against credit taken on gate passes issued on or before 30.3.1994 in fact credit is taken prior to 30.6.1994. The credit in the present case is taken before 30.6.1994.

The ratio of this decision squarely applies prima facie.

4. Rs. 1,87,859.50 has been demanded on the ground that the credit that the appellant took was based on an invoice issued by an unregistered dealer in excisable goods of a manufacture. The contention of the representative of the appellant is that the invoices were issued in April, May and June, 1994 and credit taken prior to 4.7.1994. It is only from that date that the law required, by introduction of Rule 57GG, and issued a notification recognising an invoice issued requiring registration by a dealer before he could issue a valid document for taking credit. The credit taken was therefore in accordance with law.

This contention has to be accepted as correct.

5. Further a sum of Rs. 46,462/- has been demanded on the same ground.

This sum was taken on invoices issued in July and August, 1994, after Rule 57GG came into effect. The contention is that the dealers are subsequently registered. That however does not help, however, unless it can be shown that such registration took place before 31^st December, 1995. If that were the case, credit could rightly be taken in terms of notification 64/94. However, it is not the contention in the appeal that the dealer was registered prior to 31.12.1994. I am therefore of the view that credit has rightly been denied in this case.

6. Rs. 56,536/- (Rs. 50,800/- involved in appeal E/1690 and Rs. 5,736/- involved in appeal E/1689) has been disallowed on the ground that credit was taken before the invoices were received. The contention of the appellant is that the entries of the goods were received before the invoices and therefore the entries were made in part I of the RG23A register earlier to the entries which were made in part II which relates to taking of credit. Copies of registers are not before me and it is therefore not possible to accept or reject the correctness of this claim. The Assistant Commissioner or Commissioner (Appeals) have not at all dealt with this aspect. I therefore think it appropriate to remand the matter for consideration on this point by the Assistant Commissioner. He shall, after considering the evidence which, the representative of the appellant says, has already been produced before him in reply to the notice, and giving the appellant a reasonable opportunity of

being heard on it, pass orders in accordance with law.

8. The stay applications filed in these appeals were listed for hearing out of turn, pursuant to an order of the Gujarat High Court on a special civil application filed by the appellant before me on the ground that the department has detained its goods valued at Rs. 5,52,000/- to enforce the recovery of the amounts demanded in the order impugned in these appeals. Now that the appeals having been disposed of, that order of detention does not survive and is set aside.