Squaredeal Industries Vs. Commissioner of Customs and

Squaredeal Industries Vs. Commissioner of Customs and

SooperKanoon Citation : sooperkanoon.com/26438

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-30-2001

Reported in : (2002)(150)ELT143Tri(Mum.)bai

Appellant : Squaredeal Industries

Respondent : Commissioner of Customs and

Judgement :
1. The appellants took deemed credit in terms of the order Nos.

342/1/88-TRU dated 01/06/1990 and 12/07/1990. The orders contained a clause that where any inputs were clearly recognisable as being non-duty paid or had availed exemption from duty or were chargeable to nil rate of duty such credit could not be taken. On a study of the invoices under which the deemed credit was taken it was found that certain invoices were issued by M/s. Deepal Alloys who were clearing such inputs without payment of duty in terms of Notification 180/88-CE dated 13/05/1988. The Commissioner denied the modvat credit and confirmed the duty of Rs. 56,099.90 and also imposed penalty of Rs. 5,000/-. He upheld the application of extended period on the ground in spite of the knowledge of the fact that the goods were cleared without payment of duty by the manufacturer they had taken modvat credit. Hence the appeal.

3. In the appeal memorandum reliance is placed on the judgment reported in 1992 (60) ELT 342 [Auto Piston Mfg. Co. Ltd. v. CCE] in which it was held that inputs cleared under an exemption notification could not be termed to be non-duty paid

unless the Revenue proved satisfaction of the conditions of the given case.

4. The issue as to the eligibility to the deemed modvat credit was finally settled by the larger bench judgment of the Tribunal in the case of Machine Builders [1996 (83) ELT 576]. In paragraph 23 of the said judgment it was held that where the exemption notification was unconditional then the non-duty paid nature of the goods stands proved but where it was conditional notification, it is the Revenue that has to show that the conditions were satisfied.

5. I have seen the notification. the goods are ingots falling under serial No. (1) of the notification. The condition under which the goods are eligible for nil duty clearance has been certified to be observed by the manufacturer of the inputs. This fact has not been challenged.

Therefore the obligation cast upon the Revenue in terms of para 23 of the larger bench judgment is deemed to have been discharged in the present case. The Commissioner's logic on the extended period is also sound. His order sustains.