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Commissioner of Central Excise, Vs. Re-rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Nov-07-2001

Reported in : (2003)(159)ELT192Tri(Kol.)kata

Appellant : Commissioner of Central Excise,

Respondent : Re-rolling Mills

Judgement :

1. After rejecting the request for staying the operation of the impugned order made by the Revenue, we take up the appeal itself inasmuch as the issue is decided in favour of the respondents by the earlier decisions of the Tribunal.

2. The Asst. Commissioner vide his impugned order held that the Tor Steel is excisable and the respondents were liable to pay duty on the same during the period 20.5.1988 to 15.8.1989, when there was no exemption notification. However, simultaneously he extended the benefit of modvat credit to the respondents subject to production of duty paying documents and fulfilment of other conditions. The Revenue, not being happy with the said order filed an appeal before Commissioner (Appeals). The appellate authority, after referring to the various earlier decisions of the Tribunal held that in case of confirmation of demand of duty subsequent to clearances, the benefit of modvat credit has to be extended to the assessee.

3. The Revenue is aggrieved with the above order and has challenged the same before us. In their memo of appeal, after relying upon earlier decision of the

Tribunal in the case of Paro Foods it is the contention of the Revenue that inasmuch as no declaration was filed, modvat credit cannot be allowed to the respondents.

4. After hearing Shri D.K. Bhowmik, ld.JDR for the Revenue and Shri S.C. Mohanty, ld.adv. for the respondents we find that the issue is no more res integra. The Tribunal in the following cases have held that in case of subsequent demand of duty, modvat credit cannot be denied on the sole ground that a declaration under the provisions of rule 57g was not filed on account of the simple reason that such a declaration could not have been filed inasmuch as the facility of modvat credit was not being availed on account of clearance of final product without payment of duty.Vivek RE-rolling Mills v. CCE, Chandigarh-1994 (e) Apex Steels (P) Ltd. and Ors. v. CCE, Chandigarh-1995(8) RLT 150 (CEGAT-B) The ratio of all the above decision is that in case of subsequent demand of duty, the benefit of modvat credit is not to be denied on the ground of non-filing of declaration. In fact the factual position in the case of Apex Steel Pvt. Ltd. is identical to the respondents' case inasmuch as it was the excisability of the Tor Steel and the dutiability of the same during the identical period, which was the subject matter of decision in that case. The Tribunal held that even if the requisite procedure was not followed, on account of the Tor Steel being cleared without payment of duty, the benefit of modvat credit would still be available to the assessees. As such we do not find any merits in the Revenue's appeal and reject the same.

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