

Emmes Metals Ltd. Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-06-2001

Reported in : (2002)(80)ECC434

Appellant : Emmes Metals Ltd.

Respondent : Commissioner of Central Excise,

Judgement :

1. This appeal, has been filed against the order of the Commissioner (Appeals) who has denied the modvat credit availed and allowed on the basis of a xerox copy of the bill of entry no. 4884 dt. 21.04.94. With the consent of both the sides and after waiver of pre-deposit and hearing them, I take up this matter for final disposal; and I find.

a.) The credit, as it appears from the order in original of the Assistant Collector, granting the credit, which has been set aside by the Commissioner Appeals, against which the present appeal has been filed, was availed on xerox copy of the Bill of entry no. 4884 dt. 21.04.94. The Ld. Advocate for the appellant at the time of hearing submits that it was not a xerox copy, but it was a reconstructed copy which was obtained from the Custom House, on basis of which the credit was availed as the triplicate copy was lost. This reconstructed copy was obtained as per the directions given by the department. He also submits that a two member bench in the case of Klockner Supreme Pentaplast reported in 1999 (114) ELT 253 have held that credit on presenting a reconstructed copy of Bill of Entry is eligible. Therefore the Commissioner's order denying the credit in this case should

be set aside and their appeal be allowed.

b.) I find that no reconstructed copy has been produced before nay of the Authorities below. Authorities below had decided the matter concerning a Xerox copy. If the appellants have a reconstructed copy, they can show the same to the original authority. The case could be remanded for that purpose after setting aside this order, to grant the credit, as held eligibility on a reconstructed copy in the judgment of Klockner case (Supra) 2. In view of my findings, this appeal is allowed, as remand back to the original authority, for considering the reconstructed copy of the triplicate Bill of Entry to be produced by the appellant for the eligibility of grant of modvat credit. If the same is produced the credit could be granted.

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