

Central Electronics Ltd. Vs. Commissioner of C. Ex., Meerut

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-09-2002

Reported in : (2002)(141)ELT219TriDel

Judge : Author: P Bajaj

Appellant : Central Electronics Ltd.

Respondent : Commissioner of C. Ex., Meerut

Judgement :

1. This appeal has been filed by the appellants against the impugned order-in-appeal dated 14-3-2001 passed by the Commissioner (Appeals) vide which he had remanded the matter to the adjudicating authority for fresh decision of the case on merit after affording an opportunity of hearing to the appellants.

2. The appellants, a Government of India Undertaking, were engaged in the manufacture of electrical /electronics machinery and parts thereof falling under Chapter 85 of the CETA. They were also availing Modvat facility on the duty paid inputs under the relevant rules. They were served with show cause notice for recovery of amount of Rs. 29,34,360/- on the ground of having availed the Modvat credit during the period July, 1997 to November, 1997 which was not admissible to them as inputs (batteries) on which the Modvat credit was claimed, were neither brought into factory nor used in the manufacturing activity. The appellants contested the correctness of that notice on the ground that batteries were used by them in their manufacturing activity carried out by them at the site of the contract

awarded to them by M/s. GAIL and further averred that captive power generation and distribution systems manufactured by them were fully exempt from excise duty in terms of Notification No. 108/95-C.E., dated 28-8-95 and that Modvat credit on the inputs used in the manufacture of said systems was admissible. They also averred that demand was time barred and prayed for permission for restoration of Modvat credit amount in question which was reversed by them under protest. The A.C., however, did not agree with their version and confirmed duty of Rs. 29,34,360/- and imposed penalty of equal amount payable alongwith interest. The Commissioner (Appeals) set aside the order of the A.C. and remanded the matter for fresh decision. The appellants have come in appeal before the Tribunal.

3. The learned Counsel has argued that all the pleas raised by the appellants before the Commissioner (Appeals) had not been considered before passing the impugned remand order and as such, specific direction deserves to be issued to the adjudicating authority to whom the matter had been remanded, for considering the pleas of the appellants.

4. We have gone through the impugned order of the Commissioner (Appeals) and we find that the point raised by the learned Counsel is wholly misconceived. The Commissioner (Appeals) after taking note of the Notification No. 108/95, dated 28-8-95 providing exemption to the goods supplied to U.N. or International organisations approved by the Government of India from whole of the central excise duty and the orders of his predecessor dated 16-4-99 and 25-5-2000, had ordered remand of the matter for fresh decision after hearing the appellants.

When the adjudicating authority had been directed to decide the case afresh, the appellants had not been debarred from raising pleas as taken by them in defence in reply to the show cause notice. They will be at liberty to put forth and raise their all pleas with or without documents before the adjudicating authority who had been directed to hold de novo proceedings after hearing the appellants. Therefore, apprehension in the mind of the Counsel that pleas taken in defence by the appellants will not be considered by the adjudicating authority for want of specific direction in that regard in the impugned remand order of the Commissioner (Appeals) is wholly mis-conceived and unfounded as no such thing can be inferred

from perusal of the impugned order of the Commissioner (Appeals). The duty liability and the penalty as confirmed against the appellants through the order-in-original by the adjudicating authority had been set aside by the Commissioner (Appeals). The appellants have no cause of action whatsoever to come up in appeal against the impugned order of the Commissioner (Appeals). The appeal of the appellants, in our view, is not maintainable.

5. In view of the discussions made above, the impugned order of the Commissioner (Appeals) is upheld and the appeal of the appellants is dismissed as not maintainable.

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