Goldline Industries Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/28218

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-14-2002

Reported in : (2002)(104)LC469Tri(Mum.)bai

Judge : J Balasundaram

Appellant : Goldline Industries

Respondent : Cce

Judgement :

1. M/s. Goldline Industries availed modvat credit of Rs. 88,618/- on the basis of endorsed invoices for the period 1.4.1994 to 11.7.1994.

The department was of the view that endorsed invoices were not valid duty paying documents for the purpose of taking credit and hence show cause-cum-demand notice was issued on 12.1.1995 proposing recovery of the above mentioned amount of credit and proposing imposition of penalty. The assesses replied to the notice stating that credit had been correctly availed since the invoices were issued by dealers who enclosed copies of manufacturer's invoices showing that inputs are duty paid. They also stated that the dealers who were not registered during the material period subsequently got registered. The notice was adjudicated by the Additional Commissioner who confirmed the demand and he also imposed a penalty of Rs. 30,000/- upon the assesses. The Commissioner (Appeals), while upholding the recovery of credit, set aside the penalty. The assessee has come up in Appeal No. E/2506/96-Bom against the denial of credit while the Revenue has filed Appeal No.E/78/97-Bom against the setting aside of the penalty.

2. It is the contention of Shri Gursharan Singh, learned Consultant, that credit is available since it was availed on the strength of commercial invoices issued by dealer along with manufacturer's invoices duly endorsed, attached thereto. However there is no substance in this contention as it has been held by the larger bench of the Tribunal in the case of Balmer Lawrie & Co. Ltd. v. CCE, Kanpur that endorsed invoices are not valid duty paying documents for claiming modvat credit after 1.4.1994. Following the ratio of the larger bench decision, I hold that the assesses are not entitled to credit of Rs. 88,618/-. Coming to penalty, the ground urged by the Revenue in their appeal is that since the details required as per notification 15/94 have been added subsequently on the invoices, it amounts to tampering with the records thereby warranting imposition of penalty. I find that the charge of tampering was not raised in the show cause notice nor was it the ground on which the Additional Commissioner took penal action against the assesses. Therefore there is no ground to justify the restoration of penalty.