Espirit Switchger Pvt. Ltd. Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/28366

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-10-2002

Reported in : (2003)(106)LC171Tri(Mum.)bai

Judge : S T Gowri

Appellant : Espirit Switchger Pvt. Ltd.

Respondent : Cce

Judgement :

2. The order of the Commissioner (Appeals) confirmed the liability of the appellant to deposit totalling Rs. 2,65,380/- demanded as modvat credit on three counts and penally of Rs. 20,000/-.

3. The counsel for the appellant states that the appeal is limited to the demand for modvat credit of Rs. 151547/- and the penalty. He states that the credit which was taken of the duty paid on various inputs required by the appellant for the manufacture of its finished product, moulded integrated circuit breakers has been denied only on the ground that particulars relating to the input credit were not made in the RG 23A Part I register. He accepts that there was a failure to make this entry but says that the entry for taking the credit was made. Although the show cause notice alleges that the inputs were not utilised in the finished product, there is no such finding either by the Joint Commissioner or by the Commissioner (Appeals). Therefore, the credit cannot be denied, although he accepts that the appellant may be liable to penalty for not maintaining the account.

4. The departmental representative reiterates that the entries in the account are not being maintained.

5. The show cause notice does allege that the inputs in question had not been utilised in finished product. There is however nothing cited in the notice in respect of this tentative conclusion. None of the statements of three officials which were recorded in the course of investigation accepted that this was the case. All of them only say that there was a failure to enter the amount. The Joint Commissioner himself does not deny the appellant's claim that the inputs were used in the manufacture of finished product. He says that this contention cannot be accepted because of the failure to enter the goods in the account. The Commissioner (Appeals) appears to say the same thing.

6. So long as the inputs were utilised in the manufacture of finished product, it would not be permissible to deny the credit. There is no provision in the rules for such a course of action. The decision of the Tribunal in Demosha Chemicals Ltd. v. CCE and CCE v.Subros Ltd. come to this conclusion. Therefore, there is no basis for denying the credit. However, the appellant would be liable to penalty. The penalty has been imposed on the appellant not only on account of its infraction but also on account of other two infractions as a result of which duty demand has been made.

7. In the result, I allow the appeal to the extent that the denial of the credit of Rs. 1,51,547/-is set aside.