

Rajesh Traders Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-30-2002

Reported in : (2003)(159)ELT588TriDel

Judge : P Bajaj

Appellant : Rajesh Traders

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal has been filed by the appellants against the impugned order-in-appeal dated 11-2-2002 vide which the Commissioner (Appeals) has affirmed the order-in-original dated 16-2-2000 of the Deputy Commissioner.

2. The appellants are engaged in the manufacture of iron and steel products. They took Modvat credit of Rs. 1,67,209/- on 91.265 MT defective plates received by them during the month of April, 1996, by declaring the same as inputs used in the manufacture of rounds, bar, angles, channel, flats or iron and steel and utilized that credit towards the payment of duty on final products cleared by them from the factory. They were served with a show cause notice for having taken the Modvat credit illegally and wrongly. In reply, the appellants avered that the credit had been rightly taken by them as defective plates received by them were used in the manufacture of the final products.

The Deputy Commissioner did not accept their version and confirmed the demand and also imposed penalty of Rs. 50,000/-. The Commissioner (Appeals) has affirmed that order.

3. None has come present on behalf of the appellants. A request for adjournment has been received from the consultant on the ground that he has to come in some another appeal of different assesseees on 15-11-2002 and as such this case be also adjourned accordingly. But the file shows that similar request was made earlier by the appellants vide letter dated 2-9-2002. In that letter, request on this very ground was made and adjournment was sought for 7-10-2002 and the same was granted.

The record also shows that stay application of the appellants was decided on 12-8-2002 and the case was posted for hearing on 17-9-2002.

But on that, on the request of the authorized representative, the case was adjourned for 30-10-2002. But today i.e. 30-10-2002, again a request has been sent by the consultant on the ground, detailed above.

It appears that the appellants and their consultant are deliberately prolonging the matter. I do not find any sufficient ground to adjourn the matter any more. I proceed to decide the case on merits.

4. I have heard the learned JDR and gone through the record. From the record, it is evident that the appellants took Modvat credit of Rs. 1,67,209/- on the defective plates by declaring the same as inputs. But keeping in view their final products i.e. rounds, bar, angles, channel, flats of iron and steel, the defective plates could not be termed as the inputs which are more costlier than the final product. The Deputy Commissioner had recorded definite findings in this regard which has been affirmed by the Commissioner (Appeals). The Deputy Commissioner has also in the order-in-original observed that defective plates could not be termed as re-rolling material being neither commercially viable nor practically feasible to re-roll them in order to get the re-rolled products. The cost of the defective plate shown was Rs. 11,000/- PMT during April, 1996 as is evident from the Invoice No. 66, dated 13-6-1996 of M/s Rajendra Steels and the conversion charges were taken

as Rs. 2,000 PMT to Rs. 2,500 PMT, whereas the final product was shown to had been sold at Rs. 11,270/- PMT. Keeping in view these facts and circumstances, the Deputy Commissioner came to the conclusion that the defective plates could not be called inputs for the manufacture of the final products by the appellants and that they had wrongly availed the Modvat credit. The Commissioner (Appeals) has affirmed these findings.

I do not find any sufficient cause to disagree with the findings of both the authorities below, especially when there is nothing on the record to falsify the same. Therefore, the impugned order passed by the Commissioner (Appeals), in my view, is perfectly valid and free from legal infirmity.

5. In view of the discussion made above, the impugned order is upheld and the appeal is dismissed.

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