Hmp Engineers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-08-2002

Judge : S T Gowri

Appellant : Hmp Engineers

Respondent : Commissioner of Central Excise

Judgement :

1. Notice issued to the appellant alleged that it had wrongly taken modvat credit totalling Rs. 52179/- on the ground that no duty had in fact been paid by Resha Wires Pvt. Ltd. Bangalore who issued the invoices and proposed penalty on the appellant. The notice invoked the extended period contained in Rule 571(ii). After considering the cause shown by the manufacturer, the Commissioner has confirmed the denial and imposed the penalty. Hence this appeal.

2. The appellant is absent and unrepresented despite notice. I have read the memorandum of appeal and the relevant papers and heard the departmental representative.

3. The only basis for denying the credit, contained in the notice issued to the appellant, and contained in the order of the Commissioner, is that the officers of the Directorate of Anti Evasion "had traced out that M/s. Resha Wires (P) Ltd., Bangalore had evaded Central Excise duty by suppression of production and clandestine removal of Super Enamelled Copper Wire ...." This is only information that the appellant was furnished. It is not possible for anyone, who reads the order

to concluded from this that no duty was in fact paid in respect of these gate passes. The statement of an investigating agency by itself as to the conduct of a party at Bangalore cannot lead to the conclusion that no duty had been paid on these two gate passes. There is in short a total absence of evidence to indicate that duty has been paid in regard to the invoices in question.

4. In addition, there is no basis for invoking the extended period. The Commissioner justified in invoking the extended period by saying that the appellant had not taken all reasonable steps as specified in Rule 57G(2) to verify that duty had been paid on the gate passes. He does not say how and in what manner the appellant failed to take any step.

He does not say that steps the assessee could have taken which he thinks the appellant did not take. Apart from this, a failure by an assessee to take reasonable steps (assuming that this to be the case) cannot by itself justify invocation of the extended period accompanied by any mala fide will not amount to fraud, wilful misstatement, collusion or suppression of facts for contravention of the provisions of the Act or the Rules. There was no scope for invoking the extended period.