Narula Mechanical Works Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-14-2002

Reported in : (2003)(86)ECC440

Judge : P Chacko

Appellant : Narula Mechanical Works

Respondent : Cce

Advocate for Pet/Ap. : M/s. Dhiman Industries Ltd. The Counsel

Judgement :

1. The appeal, involving an amount of duty of Rs. 38,410 and an amount of penalty of Rs. 3,000, arises for admission. There is also an application for waiver of pre-deposit and stay of recovery in respect of these amounts. On a careful examination of the records, I find that the appeal itself can be finally disposed of at this stage.

Accordingly, I admit the appeal, allow the application for waiver of pre-deposit and stay of recovery thereof, and proceed to deal with the appeal.

2. The appellants had taken deemed Modvat credit during December 1997 and November 1998 on inputs supplied by M/s. Dhiman Industries Ltd., manufacturers of iron and steel products working under the Compounded Levy Scheme under Rule 96-ZP of the Rules, read with Section 3-A of the Central Excise Act, 1944. Both the lower authorities denied the credit on the ground that certificate from the

Central Excise Range Officer having jurisdiction over the input manufacturer had not been produced in proof of discharge of duty liability by that manufacturer in terms of Notification No. 58/97-CE(NT). Hence the present appeal.

3. Heard both the sides. The learned Counsel for the appellants submits that they had, in fact, produced the required certificates before the Commissioner (Appeals) at the hearing stage but the documents were not considered by him. The learned from these documents that the Superintendent of Central Excise, Range IV, Mandi Gobindgarth had certified that M/s. Dhiman Industries had paid Central Excise duty of over Rs. 29 lakhs for the period 1.4.98 to 31.3.1999 as also duty of over Rs. 13 lakhs for the period September 1997 to March 1998. However, the payment of duty of Rs. 29 lakhs and odd for the period 1998-1999 was against a duty liability of over Rs. 39 lakhs as indicated by the Superintendent's certificate. Similarly, the payment of Rs. 13 lakhs and odd for the period September 1997 to March 1998 was against a duty liability of over Rs. 22 lakhs as shown by the Superintendent's certificate. Both these certificates prima facie indicate short payment of duty by M/s. Dhiman Industries Ltd. The Counsel for the appellants, in this connection, submits that the higher duty indicated in the certificates stand set aside by this Tribunal. He brings on record a copy of the Tribunal's Final Order Nos. A 718-722/2001 dated 27.8.2001 passed in a batch of appeals including two appeals filed by M/s. Dhiman Industries Ltd. Even after a close perusal of the cited final order and the Superintendent's certificates available on record, I am unable to make out any correlation between the two. The learned Counsel, however, persists in his submission that the Commissioner's order referred to in the Superintendent's certificates has been set aside by this Tribunal in the cited final order. The appellants will be at liberty to substantiate this submission of the Counsel before the lower Appellate authority at the appropriate stage. The learned DR, who has reiterated the findings of the Commissioner (Appeals), has no serious objection to a remand of the matter.

4. As it has been shown by the appellants that the lower appellate authority has not even attempted to examine the certificates of the Central Excise Range Superintendent, Mandi Gobindgarh, produced by them at the hearing stage of their appeal, I think the matter requires to be remanded for fresh decision. I,

accordingly, set aside the order of the Commissioner (Appeals) and allow the present appeal by way of remand.

The Commissioner (Appeals) shall consider the Central Excise Range Superintendent's certificates relating to discharge of duty liability by M/s. Dhiman Industries for the relevant periods as also the Final Order Nos. 718-722/2001 dated 27.8.2001 of this Tribunal and take a fresh decision on the question whether the deemed credit is admissible to the appellants or not. Needless to say that a reasorvable opportunity of being heard should be granted to the appellants.