Voltas Ltd. Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/29439

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-22-2002

Reported in : (2003)(107)LC35Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Voltas Ltd.

Respondent : Cce

Judgement :

1. Shri D.B. Shroff, learned Advocate appeared for the appellants. He states that the appellants imported Thermal Overload Protectors (TOP), took modvat credit and then sent the same to the job worker for manufacture of motors which on return are used in the manufacture of Air-conditioners in the appellant's factory. He stated that there is no double credit taken as alleged by the department. First time the credit has been taken of duty paid on TOPs and the second time the credit has been taken of the duty paid on motors. He also clarified that the value of the TOPs included in the value of the motors is exclusive of the duty paid on TOPs, credit of which has been taken. He further stated that the penalty is not justified as the department was kept informed all along and the department's permission was taken for sending the TOPs outside the factory premises for job work. He cited the following case laws to support his arguments:CCE, Bhubaneswar v. Konark Wires (P) Ltd. 1995 (77) ELT 315 : 1995(58)ECR 133 (T) 2. Shri M.H. Shaikh, learned JDR appearing for Revenue stated that the first case law applied to intermediate product, whereas in the instant case motor is a final product. He further stated that

second case laws allows credit if not availed by the job worker. The learned Advocate clarified that the job worker has not availed the credit and no such allegation is also there in the Show Cause Notice. Shri M.K. Gupta, learned Jt. C.D.R. in his intervention stated that Rule 57F(2) does not cover the appellant's case and as has been rightly pointed out by the Commissioner (Appeal), the appellants should have paid duty on TOPs.

However, he conceded that such duty, if paid, would have been allowed as credit to the job worker.

3. After hearing rival submissions and perusal of the case records, we find that the duty has been paid on the TOPs and again on the motors and the credit of the same has been taken. The department's contention that credit has been taken twice of the duty paid on TOPs is not factually correct. The case laws cited by the learned Advocate are very much application to the appellant's case. There is also no Revenue loss to Government as only credit of the duty actually paid has been taken.

As such, we allow the appeal and set aside the orders of the lower authorities with consequential relief.