

Cmi Ltd. Vs. Commissioner of Central Excise

Cmi Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/29476

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-2002

Reported in : (2004)(167)ELT197TriDel

Judge : P Chacko

Appellant : Cmi Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. I allow the stay application and take up the appeal for final disposal.
2. The appellants are engaged in the manufacture of insulated wires and cables and are availing the Cenvat credit facility in respect of inputs and capital goods. The Range Supdt. of Central Excise issued to them letter No. C.E,-20/2002, dated 24-4-2002, on the basis of an Audit Report, alleging that they had wrongly availed and utilized Cenvat credit amounting to Rs. 1,44,199.04. The Supdt.'s letter, further, asked the party to debit the amount in their Cenvat account. Aggrieved by this direction of the Supdt., the party preferred appeal to the Commissioner (Appeals) and the latter rejected the appeal as not maintainable. Hence the present appeal.
2. Examined the record and heard both sides. Ld. Consultant for the appellants submitted that the Supdt. of Central Excise had issued the direction in his quasi-judicial capacity and hence the direction was appealable under Section 35A of the

Central Excise Act. He further submitted that the demand of duty was raised by the Supdt. without issuing any show-cause notice as required under Section 11A of the Central Excise Act and hence the demand was ab initio illegal. Ld.

Consultant relied on the following decisions of the Tribunal :-Shree Baidyanath Ayurved Bhawan Ltd. v. CCE [2001 (129) E.L.T. 780]Hyderabad Industries Ltd. v. CCE [2002 (145) E.L.T. 463 = 2002 (51) RLT 283]Union of India v. Madhumilan Syntex Pvt. Ltd. 4. After examining the record and the submissions, I find that the short question that arises for consideration in this appeal is whether the Supdt.'s direction contained in his letter dated 24-4-2002 can be sustained in law. The direction was for reversing a credit of duty in the appellant's Cenvat account. Since it amounted to denial of the substantive benefit of Cenvat credit to the assessee, it had serious civil consequences for the assessee. It would follow that the Supdt.'s direction was in the nature of a quasi-judicial action. In other words, his letter dated 24-4-2002 was appealable under Section 35A of the Central Excise Act. The impugned order of the Commissioner (Appeals) dismissing the assessee's appeal against the Supdt.'s letter as not maintainable cannot, therefore, be sustained. Insofar as the Supdt.'s proceedings are concerned, as already noted, the proceedings were quasi-judicial. Any quasi-judicial action can be taken only in accordance with the principles of natural justice which call for issuance of a show cause notice. In the instant case, admittedly, no show cause notice was issued to the assessee before they were directed to reverse the Cenvat credit. In the case of Madhumilan Syntex (supra) the Hon'ble Supreme Court held that any demand of duty raised without prior notice under Section 11A of the Act was illegal. In Hyderabad Industries (supra) this Tribunal set aside Central Excise Supdt.'s letter demanding duty, on the ground that the procedure prescribed under Section 11A was not followed. In Aluminium Industries, (supra), the question arose as to whether an order of the Supdt. asking the assessee to reverse Modvat credit under Rule 57-I was quasi-judicial or administrative. It was held that the order was in exercise of quasi-judicial power under Rule 57-1 and hence appealable under the Act to the Collector (Appeals). In Shree Baidyanatgh Ayurved Bhawan (supra) a communication sent by the Supdt. raising a demand of duty on the assessee was set aside on the ground that it was not preceded by issuance of show cause notice. All these decisions are squarely in support of the present appellants' case.

Hence the proceedings of the Supdt. of Central Excise and the Commissioner (Appeals) are set aside and the present appeal is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com