Commissioner of Central Excise Vs. Tapti Industrial Engineers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-23-2003

Reported in : (2003)(159)ELT1148Tri(Mum.)bai

Judge : S Kang

Appellant : Commissioner of Central Excise

Respondent : Tapti Industrial Engineers

Judgement :

1. The Revenue filed this appeal against the order-in-appeal whereby the Commissioner held that the modvat credit in respect of the inputs lost as burning loss is not recoverable. The Commissioner (Appeals) also held that the Assistant Commissioner empowered to adjudicate the cases exceeding the duty of Rs. 50,000/-.

2. The contention of the Revenue is that as per the Board's instructions, the Assistant Commissioner has empowered only to adjudicate the cases involving demand less than Rs. 50,000/-.

3. In respect of the merit of the case, the contention of the Revenue is that the respondents, who were doing the job work has to return the waste and scraps to the manufacturer, as the respondents were returning less waste and scraps. Therefore, the demand is sustainable.

4. The Commissioner (Appeals) in the impugned order held that the fact regarding burning losses is mentioned in the challan issued by the job worker. The Commissioner (Appeals) also relied upon the Board's Circular dated 15/1/88, to say that the duty on inputs not be denied on the ground that part of inputs is contained in the slug and other invisible losses. In the present case the respondents were receiving aluminium ingots for die-casting. Aluminium ingots were melted, and during that process certain quantity of inputs was lost which is known as burning losses.

5. This factual finding is not contravened by the Revenue in the present appeal.

6. In respect of the jurisdiction of the Assistant Commissioner regarding the adjudication cases involving more than Rs. 50,000/-, the departmental instructions an in administrative in nature. Under the excise Acts or Rules, there is no such limit for adjudication by the Assistant Commissioner. The violation of administrative instructions cannot vitiated the proceedings. (SIC)