Commissioner of Central Excise and Vs. Rosalee Paints P. Ltd.

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SooperKanoon Citation : sooperkanoon.com/31086

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-02-2003

Reported in : (2004)(175)ELT646Tri(Mum.)bai

Judge : K Kumar

Appellant : Commissioner of Central Excise and

Respondent : Rosalee Paints P. Ltd.

Judgement :

1. This is a departmental appeal on the ground that modvat credit has been wrongly taken on the basis of the endorsed invoices. The period involved is April 1994 to June 1996. Shri Hemant Kotikar, Ld.SDR appearing on behalf of the Revenue contended that in view of the Notification No. 15/94-CE (N.T.) dated 30.03.94 and the Notification 16/94-CE (N.T.) dated 30.03.1994 and Rule 57-G, availing of the modvat credit on invoices endorsed after 1.4.94 is not permissible and as such the respondent are not entitled to avail modvat credit in this case.

2. Shri Mayur K. Shroff, Ld. Advocate appearing on behalf of the respondent contended the settled legal position is that procedural lapses are not to be taken into account for denying the modvat credit.

He heavily relied on the decision of the Commissioner of Central Excise (Appeals) Mumbai, Order No. GS/95-BRD/97 dated 16.7.97 particularly paras 4 and 5, wherein the Commissioner (Appeals) has considered the Tribunals decision in the case of M/s. Beepee Coatings Limited v. CCE vide order No. 543/97/WRB dated 21.9.97 (reported in - 1997 (92) ELT 223 (T) and the decision of M/s. Prakash Cotton Mills Ltd. v. CCE 1996 (85) ELT 149 (T). Besides this the Ld. Counsel also referred to the amended Rule 57G which reads as under:- "(11) Credit under Sub-rule (2) shall not be denied on the grounds that- (i) any of the documents, mentioned in Sub-rule (3) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of the goods, assessable value, name and address of the factory or warehouse.

3. The Ld. Counsel submits that invoices in question contained all the necessary particulars as mentioned in the said rule. He also relied on the decision in the case of Jayaswala Neco Ltd. v. CCE, Bhopal - 2001 (47) RLT 49 (CEGAT - Del.) to the effect that credit to be available on the basis of dealer's invoice, though endorsed dispatch advice was not valid after 30.6.94 and Tribunal remanded the case for denovo adjudication. The decision in the case of R.S. Julliram Shamlal v. CCE, Cal.II - 2002 (51) 354 interalia holding that Invoice - endorsed by dealer and accompanied by his own invoice giving all required details - credit admissible and the decision in the case of Kamakhya Steels (P) Ltd. v. CCE, Meerut 2000 (121) E.L.T.247 (Tribunal - LB) wherein the Tribunals interalia held and remanded the matter to the adjudicating authority to examine afresh in the light of the amended Rules 57G and 57T. The Ld. Counsel submits that the matter may be remanded to the adjudicating authority and the Commissioner (Appeals) order needs to be upheld in the light of the above said Circular.

4. After hearing both sides and perusal of the decisions quoted by the Ld. Counsel, I find that the matters were remanded by the Tribunal for denovo adjudication.

5. I, therefore, remand the appeal to the adjudicating authority for denovo adjudication in the light of the above said circulars and the decisions relied on by the Ld. Counsel and to pass a fresh speaking order after affording reasonable opportunity of being heard to the appellants.