

Cce Vs. T

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-09-2003

Reported in : (2003)(89)ECC448

Judge : S Peeran

Appellant : Cce

Respondent : T

Judgement :

1. This is a revenue appeal against the Order-in-Appeal No. 102/2000 (MDU) dt. 26.2.03, passed by the Commissioner (Appeals), Trichy. The Commissioner (Appeals) has upheld the taking of Modvat Credit on the basis of extra copy of the invoice. He has noted that the Asst.

Commissioner has granted permission to take credit on the basis of the extra copy of the invoice since the original was lost but subsequently issued a SCN and disallowed the credit. He has held that credit can be granted on copies of the invoices other than the duplicate in cases where the duplicate copy is lost so long as the duty paid character of the inputs is not disputed. The Revenue refers to the Rules under 57G and submits that there is no due compliance of the Rules and Modvat Credit cannot be taken on documents other than the duplicate copy of the invoice. In this connection they rely on the judgment of this Bench rendered in the case of M/s. Madura Coats Ltd., 2001 (132) ELT 362, wherein it has been held that availment of credit within six months under Rule 57G (5) is substantive

requirement and not procedural one.

It is stated that on the same analogy availment of credit only on the prescribed document is substantive requirement. They further drawn Bench's attention to the Larger Bench judgment of the Tribunal in the case of CCE, New Delhi v. Avis Electronics Pvt. Ltd., 2000 (67) ECC 643 (T) : 2000 (117) ELT 571, wherein it has been held that the rule makes it clear that a manufacturer could take credit only on the basis of duplicate copy of the invoice and where the duplicate copy has been lost in transit, they could take credit on the basis of the original copy of the invoice provided they satisfy the Assistant Commissioner about the loss of the duplicate copy and this is a mandatory requirement and cannot be a mere procedural technicality. Further reference is drawn on another Larger Bench judgment rendered in the case of M/s. Atlantic Chemicals Ltd. 2001 (137) ELT 635 (T) and M/s.

Grasim Industries, 2001 (137) ELT 1341 (T), wherein credit has been denied in respect of Original invoice. Further reference is drawn to the judgment of Punjab Paint Colours and Varnish Works (P) Ltd., 1999 (107) ELT 766, wherein credit has been denied on the strength of extra copy of invoice. Similar view was expressed by the Tribunal in the case of M/s. ACC Ltd., 2001 (133) ELT 357, wherein the Tribunal held that there is no provision in the Modvat Rules for allowing credit on extra copy of the invoices and also in the case of M/s. Tinsplate Co, of India Ltd. v. CCE, Bangalore, 2002 (79) ECC 712 (Tri) : 2002 (148) ELT 1151, wherein the Tribunal held that extra copy of the invoice not being a prescribed document, no infirmity can be found in the lower authority's order in disallowing modvat credit.

2. Ld. DR refers to these judgements and prays to set aside the impugned order.

3. Ld. Counsel Shri M. Venkataraman, submits that party had taken credit on file copy of the 'invoice'. It was prepared simultaneously alongwith the original and duplicate copy of the invoices. He submits that the entire requirement for loss of the document has been complied with and the Asst. Commissioner was satisfied and therefore they have taken credit on the basis of extra copy of the invoice. He further submits that when the same has been acted upon then it should be allowed as held by the Tribunal in the case of CCE, Ahmedabad v. Satyen Dyes, 2000 (67)

ECC 643 (T) : 2001 (134) ELT 655. He submits that this citation reference to procedural violation in the S. No. in the documents however, the ratio would apply.

4. Ld. DR submits that this citation is clearly distinguishable as it pertains only to the objection raised by the department with regard to the S. No. and has nothing to do with taking modvat credit on a document which is not prescribed.

5. On a careful consideration, I notice that the Revenue has made out a case for setting aside the impugned order. The issue is no longer res integra. The citation referred to by the Revenue clearly applies to the facts of the present case. In the present case, the assessee has not applied for permission to take credit on loss of original invoice. They have taken permission to utilise modvat credit on the basis of original invoice. Both the original and duplicate invoices have been stated to be lost in transit. In terms of the citation, it is held that the assessee could have taken modvat credit on original invoice on the Asst. Commissioner being satisfied about the loss of duplicate copy on transit. In this case the assessee has have taken modvat credit based on extra copy of the invoice. In these circumstances, the Tribunal has held that Modvat credit cannot be taken on extra copy of the invoice as held in the case of Punjab Paint Colours and Varnish Works (P) Ltd., (supra) and in the case of M/s. Tinplate Co. of India Ltd. v. CCE, Bangalore (supra). The Tribunal in the Larger Bench decision as in the case of M/s. Atlantic Chemicals Ltd., and M/s. Grasim Industries (supra), has also denied credit even in respect of original invoice. As the law is clear, the Commissioner has committed an error in allowing the assessee's claim to take modvat credit on the basis of extra copy of the invoice. In view of the citation referred to by the Revenue, the impugned order is set aside and the appeal is allowed.

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