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Commissioner of Central Excise Vs. Avis Machine Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-04-2003

Reported in : (2003)(157)ELT438Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Avis Machine Pvt. Ltd.

Judgement :

1. This is an appeal filed on the Commissioner of Central Excise, Surat-I against the order-in-appeal passed by Commissioner (Appeals) of Central Excise, Surat. M/s. Avis Machine Pvt. Ltd., (the respondents) were denied Mod-vat credit to the extent of Rs. 40,001.40 in respect of certain items of inputs. The Modvat declaration under Rule 57G was furnished on 21-9-1994 while the credit was availed on 18-9-1994 i.e.

before filing the declaration. Against the order-in-original, the matter was carried out in appeal to Commissioner (Appeals). The Commissioner (Appeals) in his order noted that there was 2 days' delay in filing the declaration. There was also an application dated 26-12-1994 addressed to the Assistant Collector for condoning the delay. Taking of credit before filing the declaration according to the Assistant Collector is not permissible. The Commissioner (Appeals) in his order, however has overruled this objection and allowed the credit and set aside the order-in-original. In other words, whatever delay that had occurred in making the declaration stood condoned by the Commissioner (Appeals).

2. In the instant appeal filed by the Commissioner of Central Excise, Surat-I, it is pleaded that, the filing of declaration should be precedent (and not antecedent) to the availment of the Modvat credit.

He further says that, in terms of amendment to Central Excise Rules vide Notification No. 8/93-C.E. (N.T.), dated 1-11-1993 certain relaxation has been introduced. In terms of relaxation, the manufacturer is allowed to make a declaration subsequent to taking of credit. However, in the appeal, it has been pleaded that, the Assistant Collector is required to record the reason in writing for condoning the delay.

3. On examining the grounds of appeal of the Commissioner, I find that, the appeal is without any substance and merit. When the Commissioner (Appeals), who is the superior authority, has come to a conclusion that the delay in question deserved to be condoned, it is strange that the Commissioner believes that only the Assistant Collector could have exercised this power and condoned the delay and the condonation by the Commissioner (Appeals) is without any authority of law. Commissioner (Appeals) being an appellate authority can always modify the order of the lower authority which will obviously cover the action to condone the delay, which power Assistant Commissioner failed to exercise. It would have been a different thing if the challenge was directed against the action of condonation ordered by the Commissioner (Appeals), based on facts to counter such an action to claim that condonation has been done without any justification. There is no such challenge.

4. Accordingly, I hold that the appeal filed by the Commissioner of Central Excise is devoid of merits and deserves to be rejected.

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