Commissioner of Central Excise Vs. Mac Laboratories Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-04-2003

Judge : S T C.

Appellant : Commissioner of Central Excise

Respondent : Mac Laboratories Ltd.

Judgement :
1. In this case, the Departmental appeal was allowed by Order No.C-III/29/WZB/2003 dtd. 03/01/2003 setting aside the impugned order-in-appeal following the ratio of the Tribunal decision in the case of Poddar Udyog Limited v. C.C.E. Calcutta-II - 1997 (95) E.L.T.438 (Tribunal). The Order-in-original was restored but the penalty imposed was reduced from Rs. 61,058/- to Rs. 5,000/-.

2. The present ROM has been filed on the ground that the learned Counsel for the respondents being busy before another Bench of the Tribunal could not remain present at the time of hearing of the Department's appeal in the present case. The learned counsel submits that applying the ratio of the Apex Court decision in Escorts Ltd. v.C.C.E. New Delhi - 2001 (133) E.L.T. 530 (SC), ex-parte order passed by the Tribunal should be re-called and a fresh order should be passed after hearing the respondents.

3. After hearing both sides and perusal of case records including the cited case laws, I am of the opinion that there has been a genuine mistake on the part of the respondents' counsel in not being able to attend the proceedings before the

Tribunal which has resulted in the aforesaid ex-parte order dtd. 03/01/2003 Accordingly, the said order is re-called following the ratio of the Apex Court decision cited above and the matter is re-heard.

4. The learned Counsel for the respondents distinguishes the decision of Poddar Udyog Limited (supra) and states that in the present case, the supplier-manufacturer dispatched some modvatable inputs directly to the respondents on account of Blueshield P. Ltd. which is a group company and for whom to respondents acted as a loan licensee apart from the fact that the address of the loan licensee and the consignee is also one and the same. He also states that in the context of the invoices endorsed to the loan licensees, the following Tribunal decisions have allowed credit:-Spa Pharmaceuticals P. Ltd. v. C.C.E. Pune-II - Order No. C-I/909/03-WZB dtd.01/04/2003. 2) Crop Health Products Ltd. v. C.C.E. MeerutArunoday Construction Company (P) Ltd. v. C.C.E. Shillong - 2001 (137) E.L.T. 426 (Tri.Kolkata). 4) Hegal Capsul Indus. Ltd. v. C.C.E. Mumbai-I - 2001 (137) E.L.T. 374 (Tri.-Mumbai).

5. He further states that the inputs have been received, accounted for and utilized in the manufacture of dutiable goods on account of Blueshield P. Ltd. The learned advocate states that in view of the cited decisions, the Commissioner (Appeals) was justified in setting aside the order-in-original though he did not specifically cite these decisions in his order and merely mentioned that there are several judgements allowing credit on endorsed documents.

6. I have also heard the learned D.R. In view of the fact that in similar cases, the Tribunal has allowed credit under endorsed documents in respect of inputs consigned to principal manufacturers received and utilized by loan licensees, in this case also the respondents cannot be denied credit. Therefore, I am of the opinion that there is no justification to interfere with the order-in-appeal.