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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-06-2003

Reported in : (2004)(177)ELT709TriDel

Judge : S Kang, M T K.D.

Appellant : Teletubes Electronics Ltd.

Respondent : Cce

Judgement :

1. The appellant's unit was visited by the Central Excise officers for stock verification, which resulted in noticing shortage of inputs. The finished goods are Picture Tubes Monitors. the inputs are glass shells.

Total shortage was 9417 glass shells. The appellants reversed the Modvat credit of Rs. 10,63,676/-. On 23.4.93 corresponding to the credit relating to the said quantity of glass shells. The appellant had taken suo moto credit of Rs. 10,63,676/- vide RG 23A part-II vide Entry No. 589 dated 5.9.97 on the strength of the certificate issued by Superintendent (Prev.), Central Excise, Meerut. A show-cause notice was issued to the appellant seeking recovery of the aforesaid amount of credit. The Assistant Commissioner (adjudicating authority) confirmed the demand. The appeal filed before the Commissioner (Appeals) was also rejected.

3. We find that the objection in the show-cause notice for denial of credit was that, the said credit was taken on the strength of a certificate of Supdt. (Prev). It is

alleged that the credit taken on the strength of the said certificate, is not admissible. In the adjudication order, it has been held that, only specified duty paying documents can be the basis for taking Modvat credit and the certificate issued by Supdt. (Prev.) is not a valid document for taking credit. The order of the Commissioner (appeals) is merely reiteration of the order-in-original. In this connection, we not that the objection of the lower authorities is without any basis. The duty paying documents on the basis of which credit was taken initially at the point of receipt of the glass shells in the factory were not disputed. When the alleged shortage was pointed out to the appellants, the appellants had intimated that, the 9417 glass shells are stored outside the factory godown. This stock is verified by the Supdt. (Prev.). The credit in respect of these glass shells which were removed outside the factory from time to time has been reversed vide a single Entry No. 60 dated 23.4.93 in the RG 23A Part-II. This debit entry undisputable relates to duty payable on clearance of inputs as such (glass shells) which were found stored in a godown outside the factory premises. This payment was effected only fro the reasons that though the inputs were removed as such from the factory, no corresponding payment of duty thereon was made at the point of clearance of the glass shells. We are unable to fathom, as to how this debit entry could not be considered as the payment of duty on the glass shells. The certificate from the Supdt.

(Prev.) merely refers to this payment and correlates the same to be pertaining to 9417 glass shells. The Id. DR vehemently argued that, these glass shells were removed from the stock of inputs in a clandestine manner. Even if that be so, the appellants have been penalised. However, for that reason the debit entry does not lose its legal sanctity of being duty payment. Even if, the appellants were to follow the procedure laid down and shift the input either enblock or on piece meal basis, it would have resulted into generation of invoice and a corresponding debit entry in the RG 23A Part-II. The invoice could have been issued only on self basis because, these glass shells were not going to any customer, but were to be shifted to a location outside the factory. Therefore, non-generation of invoice is the only deficiency in the whole transaction. This does not erase the duty-paid character o the glass shells which were received from outside the factory. Once this position is arrived at, on re-entry of these glass shells in the factory for use in the manufacture of final product has to be held as entry of duty paid inputs and the credit cannot be disallowed as attempted by the authorities below.

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