Commissioner of Central Excise Vs. Balkrishna Tyres

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-11-2003

Judge : S T Gowri

Appellant : Commissioner of Central Excise

Respondent : Balkrishna Tyres

Judgement :
1. This appeal is by the Commissioner against that part of the order of the Commissioner (Appeals) in which he has permitted the respondent to take credit on the basis of duplicate copy of the invoice issued in August, 1999 by the manufacturer of capital goods that the respondent received.

2. The Commissioner has relied for his conclusion upon the provisions of the trade notice dated 26-9-1994 issued by the Aurangabad Collectorate, which, according to him, provided that credit was permitted to be taken on the original copy of the invoice. The appeal challenges the findings on the ground that the trade notice did not contain any such provision. A copy of the trade notice has been enclosed to the appeal. The trade notice consists of questions posed and the answers to these questions. Question 12 and the clarification to it read as follows: Whether it is essential that the invoice should be prepared in number of copies and marked as "original", "duplicate", "triplicate" etc.

Further, whether any particular copy only should be sent to the customer, which will be held by the authority for Modvat purpose.

Dealers issuing the invoices should mark invoice copies as "original", "duplicate", "triplicate" etc. Further, the "original" copy of the valid document should be provided for availing Modvat credit.

The last sentence of this clarification is at first sight ambiguous and confusing. It could either mean, as the Commissioner has said, that original copy of the invoice, i.e. the first of the set of invoices that are signed and issued by the manufacturer, is valid copy for taking credit or, the appeal contends, that credit can be taken only on the "original" of the relevant copy ("original" or "duplicate") of the invoice, and not on a facsimile of it. It is relevant to note that the question to which the answer was given is in two parts. The first part was whether it is essential that the copies of the invoices should be marked "original", "duplicate" etc. The second was whether any particular copy should be sent to the customer, which should be valid for modvat purposes. The question nowhere contains a reference to copies of invoices. In the context of this question, the answer cannot be given the meaning that the appeal seeks to give. It is the more natural and logical one in the manner that Commissioner understands. I therefore find no ground to allow this appeal.