Commissioner of Central Excise Vs. Rosemount (India) Ltd.

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SooperKanoon Citation : sooperkanoon.com/33340

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-08-2003

Judge : S T Gowri

Appellant : Commissioner of Central Excise

Respondent : Rosemount (India) Ltd.

Judgement :

1. Notice issued to the assessee proposed to deny modvat credit that it had taken of the duty paid on various inputs, on the ground that receipt of these inputs had not been entered in the part I of the RG23A register. After considering the cause shown and hearing the assessee, the Asst. Collector concluded that the fact of receipt of the goods in the assessee's factory was established from its internal records and there being no dispute about the use of the inputs in the manufacture of the finished product, the failure to enter the particulars in the part I of the RG23A not by itself justify denial of credit. This appeal by the Commissioner is against the dismissal by the Commissioner (Appeals) of his appeal against the Asst. Collector's order.

2. The departmental representative contends that the failure to enter the case in the relevant portion of the RG23A register is not a simple or technical procedural contravention that is capable of being condoned; it is the condition precedent to the taking of the credit.

Hence credit should be denied.

3. I do not find it possible to agree with this contention. Rule 57G as it stood at the relevant time, in 1987 when the credit in question came did not contain any express provision that credit could not be taken if the receipt of the inputs was not recorded in the RG23A register. Nor is it possible to infer the existence of any such requirement in the rules. Sub-rule (2) of Rule 57G provided that a manufacturer who had filed a declaration as prescribed in sub-rule (1) should take credit of the duty paid on the inputs received by him. Sub-rule (3) provided that no credit shall be taken unless the inputs were received in the factory under cover to any of the documents specified in the entry of the goods in the RG23A register is not a condition precedent to taking credit, No doubt Sub-rule (4) of Rule 57G elsewhere provided for maintenance by the manufacturer in the account from RG23A part I and II and also for submission of a monthly return indicate particulars of the inputs received and the credit taken. The facts indicate that the assessee had entered the details of the credit taken in part II of RG23A account.

There was thus no intent to conceal from the department the fact of the inputs having been received and the credit having been taken.