Modipon Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-2003

Reported in : (2004)(92)ECC407

Judge : Author: K Usha

Appellant : Modipon Limited

Respondent : Cce

Judgement :

1. This is an appeal at the instance of the assessee challenging the Order dated 4.3.2003 passed by the Commissioner (Appeals). The proceedings arise out of an order of remand. Final Order was passed by this Tribunal under Final Order No. 443/99-A dated 9.4.99. Under the above order the Tribunal had directed the adjudicating authority to consider two issues, one relating to the claim of the assessee for deduction in the name of transit loss and the second relating to C & F charges. The original authority by its order-dated 17.9.99 rejected those contentions. On appeal the Commissioner (Appeals) affirmed the order passed by the adjudicating authority.

2. In this appeal apart from those contentions, the learned Counsel wanted to argue on different points also. We are of the view that only 2 issues emerge out of this proceeding pursuant to the remand order of this Tribunal referred above. The Commissioner (Appeals) has rejected the claim for deduction on account of transit loss following the decision of the Supreme Court in CCE, Meerut v. Surya Roshni

Limited, 2000 (72) ECC 476 (SC) : 2000 (122) ELT 3 (SC). The learned Counsel appearing on behalf of the appellant submitted that ratio of the above decision cannot be applied in the present case since Supreme Court has not examined the issue from the point of view of the lessor amount received from the buyer on account of the transit loss. We reject this contention. The ratio of the decision of the Supreme Court is that any such transport loss will not affect, the liability to the excise duty on the assessee. We, therefore, confirm the finding of the Commissioner (Appeals) on this issue.

3. On the issue of C & F expenses the Commissioner (Appeals) placed reliance on the decisions of the Supreme Court in Union of India v.Bombay Tyre International, 1986 (21) ECC 102 (SC) : 1983 (14) ELT 1896 (SC), and GOI v. MRF Limited, 1995 (51) ECC 1 (SC) : 1995 (77) ELT 433 (SC).

4. The learned Counsel appearing on behalf of the appellant placed reliance on 2 decisions of the Tribunal in the cases of Kerala State Electronics Development Corporation v. CCE, Cochin, 2000 (125) ELT 596 & Collector v. Detergents India, 1993 (63) ELT 167 and contended that the C & F expenses cannot be added to the assessable value. We find no merit in this contention. The two decisions sought to be relied upon by the learned Counsel have no application in the present case. Those were cases where expenses were incurred after the sale has taken place.

Admittedly there is no factory gate sale in the facts of the present case. We therefore, hold that the Commissioner (Appeals) has correctly applied the ratio of the two decisions of the Supreme Court mentioned above for rejecting the claim under C & F.5. In the light of the above, we find no merit in the appeal. The appeal stands dismissed.