

Bestavision Electronics Ltd., Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-22-2003

Judge : A T V.K., P Chacko

Appellant : Bestavision Electronics Ltd.,

Respondent : C.C.E.

Judgement :

1. As these four appeals arise out a common Order-in-Original NO. 4/03 dated 30.01.03, by which the Commissioner has disallowed the MODVAT Credit to M/s. Bestavision Electronics Ltd. and imposed penalties on all the appellants, these are being taken up together for disposal.

2. Shri B.L. Narasimhan, Learned Advocate, submitted that M/s.

Bestavision Electronics Ltd., appellant No. 1, manufactures colour T.V.sets and the other three appellants manufacture colour picture tubes; that on receipt of colour picture tubes on payment of duty, the appellant No. 1 takes MODVAT Credit of the duty paid on colour picture tubes; that the defective colour picture tubes are sent back by the appellant No. 1 to the appellants Nos. 2 to 4 for repairs under Rule 57F(4) of the Central Excise Rules after reversing 10 per cent of the MODVAT Credit involved; that after rectification of the defect, the rectified colour picture tubes are sent back by the appellants No 2 to 4 to appellant No. 1 under the same challan and on receipt of the rectified goods, appellant No. 1 takes back the MODVAT Credit of 10 per cent reversed earlier by them ; that the

Commissioner, under the impugned order, has held that the MODVAT Credit is not available to the appellant No. 1 as they were not mentioning serial No. of defective colour picture tubes and thus were not following the procedure under Rule 57F (4) of the Central Excise Rules, 1944; that the penalties have also been imposed on the appellants No. 2 to 4 on the ground that they had enabled M/s. Bestavision Electronics Ltd. to avail the Modvat Credit on fresh colour picture tubes, which had been replaced in the garb of repaired defective colour picture tubes. The learned Advocate mentioned that the issue involved in all these appeals is squarely covered by the decision of the Appellate Tribunal in the case of Samsung India Electronics Ltd. & Ors. Vs. C.C.E., Noida (Final Order No. A/639-41/NB(C) 2003 dated 28.10.2003 wherein it has been held that "non mention of the identical mark or serial number of the CPTs by them at the time of sending back the same after repair did not warrant a presumption which has been drawn by the Adjudicating Authority; that those were never repaired but replaced by them". We also heard Sh.

Virag Gupta, learned D.R., who reiterated the findings as contained in the impugned order.

3. We have considered the submissions of both the sides. The issue involved in the present matter is similar to the issue involved in the relied upon decision in the case of Samsung India Electronics Ltd. & Ors. (supra). The ratio of the said decision is squarely applicable to the facts of the present matters as therein also M/s. Samsung India Electronics Ltd. had returned the defective colour picture tubes to M/s. Samtel Colour Ltd. and M/s. J.C.T. Electronics for removing the defects under the provisions of Rule 57F (4) of the Central Excise Rules and the allegation of the Department was that there was replacement of defective picture tubes instead of these being repaired.

Thus, following the ratio of the said decision, we allow all the appeals.

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