Diamond Cement Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-05-2004

Judge : P Bajaj

Appellant : Diamond Cement

Respondent : Cce

Judgement :

1. In this appeal which has been preferred by the appellants against the impugned order-in-appeal, the issue relates to the availability of the modvat credit of the amount in question of the certified copy of the invoice.

2. So far as receipt, duty paid character, of the inputs and the utilisation of the same in the final products by the appellant is concerned, the same remains undisputed. The only ground on which credit has been disallowed to them is that they failed to produce the duplicate copy of the relevant invoice. But from the order-in-original, I find that on account of loss of the duplicate copy as well as of the original copy, the appellants procured certified copy of the invoice from the Inspector of Central Excise and produced the same before the competent authority. The learned Counsel has contended that at the time of taking credit, the duplicate as well as the original invoices were with the appellants and the same were lost only in transit. In the other hand the learned DR has however, contested this contention of the learned Counsel. The learned Counsel has also referred to the ratio of law laid down in Union of India vs. Klockner Supreme Pentaplast Ltd. and Another 2001 (47) RLT 892.

3. In my view, keeping the facts and circumstances of the case the matter deserves to be sent back to the adjudicating authority for fresh decision in the light of the ratio of law laid down in Klockner Supreme Pentaplast Ltd. (supra). The high Court in case has upheld the order of the Tribunal allowing modvat credit on the certified copy of the Bill of Entry. The ratio of law laid down in this case has got a substantial bearing on the present case. This law has been overlooked by the authorities below while disallowing the modvat credit. More over, the certified copy as per the appellants was issued by the Superintendent of Central Excise and the authenticity of the same could not be doubted. The appellants when took the credit initially were in the possession of the duplicate as well as the original invoice. But all these facts and circumstances have not been appreciated by the authorities below. They have simply disallowed the credit by observing that on the certified copy of the invoice, credit cannot be allowed.

They have also ignored the fact that the appellants had intimated about the loss of the duplicate copy as well as the original invoice in transit. But this aspect too has not been taken note of by the authorities below.

4. Therefore, keeping in view the facts and circumstances of the case and the ratio of the law laid down in the above referred case, the impugned order of the Commissioner (Appeals) is set aside. The matter is sent back to the adjudicating authority for fresh decision after hearing both the sides. The appeal of the appellants stands allowed by way of remand.