Cce Vs. Muzaffarnagar Pipe Ind.

Cce Vs. Muzaffarnagar Pipe Ind.

SooperKanoon Citation : sooperkanoon.com/33771

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-13-2004

Reported in : (2004)(176)ELT185TriDel

Judge : P Chacko

Appellant : Cce

Respondent : Muzaffarnagar Pipe Ind.

Judgement :

1. Examined the records and heard both the sides. Deemed modvat credits totalling to Rs. 5,59,280/- were denied to the respondents by the original authority and a penalty of Rs. 30,000/- was imposed on them by that authority. That was on the ground that he input-supplier has not discharged duty liability in full in respect of the inputs on which the deemed credits were taken by the respondents and therefore, the conditions set out in Notification No 58/97-CE dated 30.8.97 had not been fulfilled. The appeal preferred by the party against the decision of the original authority was allowed by the Commissioner (Appeals).

Hence the present appeal of the Revenue.

2. The deemed credits were taken on the strength of invoices which were issued by the inpute-manufacturers working under the Compounded Levy Scheme of Rule 96-ZP of the Central Excise Rules. 1944 read with Section 3-A of the Central excise Act. All the invoice contained declaration to the effect that duty liability had

been discharged under Rule 96-ZP(3) read with Section 3-A. The short question which arised in this appeal is whether apart from the above deceleration by the input-supplier, anything more required to be done by the respondent to be eligible for deemed Modvat credit in respect of the inputs covered by the invoices. This question has been settled in favour of the assessee by the High court of Punjab & Haryana in the case of Vikas Pipe Vs. CCE Chandigarh [2003 (59) RLT 979 (P&H). The ratio of the high Court's decision in contained in the last para of its judgment, which is reproduced below: - In that case, the Tribunal had taken a contrary view and this Court had upheld the same holding that the deemed Modvat credit can be claimed in terms of the assessee should produce the invoices covering the goods in which the manufacturer should give a declaration that the manufacturer has suffered excise duty. In the case before us the show cause notice issued to the assessee itself points out that the suppliers have been declaring on these invoices that the inputs suffered excise duty but the Tribunal obviously went wrong in holding that since excise duty has in fact not been paid by the supplier, the assessee was not entitled to claim Modvat benefit.

Since there is not requirement in the notification that the assessee has to lead evidence to show that the supplier had discharged its excise duty liability, we are clearly of the view that the Tribunal was in error in disallowing the Modvat credit to the assessee.

consequently the aforesaid question which arises from the order of the Tribunal is answered in favour of the assessee and against the Department holding that the assessee in the circumstances of the present case is entitled to the benefit of Modvat credit. The petition stands disposed of as above." Following the above ruling of the High Court, I hold that the respondents were entitled to avail deemed Modvat credit on the strength of the relevant invoices as held by the lower appellate authority. The appeal is rejected.