

Commissioner of C. Ex. Vs. Kamla Dials and Devices

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-15-2004

Reported in : (2004)(166)ELT56TriDel

Judge : P Bajaj

Appellant : Commissioner of C. Ex.

Respondent : Kamla Dials and Devices

Judgement :

1. In this appeal, the Revenue has made challenge to the impugned order-in-appeal vide which the Commissioner (Appeals) has reversed the order-in-original disallowing modvat credit to the respondents on the invoices which were not issued by the registered dealer.

2. None has come present on behalf of the respondents. The Counsel has sent a request for adjournment on the ground that he has not received full brief from the respondents. But I do not find it to be a sufficient ground and as such the request for adjournment is declined.

I proceed to decide the appeal after hearing the learned JDR.3. The perusal of the show cause notice placed on the file shows that Modvat credit of the amount in dispute of Rs. 36,439/- availed by the respondents during August and September 94, was sought to be denied to them on the ground that the invoices on the strength of which it was availed, were not issued by the

person/dealer/depots/importer who was not registered with the Department under Rule 174 of the Rules and that the invoices also did not contain particulars required under Notification 15/94-C.E. (N.T.). The adjudicating authority disallowed the Modvat credit on these grounds. But the Commissioner (Appeals) has not touched any of these grounds at all while reversing the order of the adjudicating authority. The learned Commissioner (Appeals) has allowed credit by holding that the condition of following the proper procedures in respect of lost duplicate copy of invoice for transporter was introduced vide Trade Notice 111/94, dated 2-12-94, whereas credit was taken prior to that date.

4. It appears that the learned Commissioner (Appeals) was under this impression that credit had been disallowed on the ground that the invoices on the basis of which it was taken, were not duplicate copies for the transporter. But this was never the ground set out in the show cause notice. The learned Commissioner (Appeals) has thus travelled beyond the scope of the show cause notice. Therefore, the impugned order passed by him cannot be sustained and is set aside. The matter is sent back to the Commissioner (Appeals) for fresh decision in accordance with law.

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