Super Trading Co. and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-12-2004

Reported in : (2004)(94)ECC507

Judge : A T V.K., P Chacko

Appellant : Super Trading Co. and ors.

Respondent : Cce

Judgement :

1. In these 8 appeals, arising out of a common Order-in-Original No.244-52/03 dated 30.5.2003, the issue involved relates to availability of deemed Modvat Credit under Notification No. 58/97-CE dated 30.8.97.

2. Shri Balbir Singh, learned Advocate, submitted that all the appellants manufacture M.S. sockets, out of M.S. bars which they procure from M/s. Dhiman Industries Ltd., who were paying Central Excise duty under the provisions of Section 3A of the Central Excise Act; that all the appellants availed of deemed Modvat Credit at the rate of 12% of the invoice value under Notification No. 58/97-CE; that the duty has been demanded and penalties have been imposed on the ground that their supplier M/s. Dhiman Industries Ltd. had not discharged their duty liability as per the annual capacity of production determined by the Commissioner; that the invoices, alongwith which they had received the goods, contain the declaration to the effect that the duty had been paid under Rule 96ZP; that in view of this factual position, Modvat Credit cannot be denied to them.

Finally, he submitted that in any case M/s. Dhiman Industries Ltd. have now discharged their duty liability for the period from April 1999 to November 1999 which is the relevant period in all these appeals.

3. On the other hand, Shri H.C. Verma, learned DR, submitted that the fact remains that appropriate duty had not been discharged by their supplier and they were not eligible for the deemed Modvat Credit at the material time; that this was the specific requirement of Rule 57A(6), which provides that the manufacture shall take all reasonable steps to ensure that the inputs acquired by him are goods on which appropriate duty of excise as indicated in the documents accompanying the goods has been paid under Section 3A of the Central Excise Act.

4. We have considered the submissions of both the sides. The deemed Modvat Credit under Notification No. 58/97-CE was available to the manufacturers receiving inputs on which duty of excise has been paid under Section 3A of the Central Excise Act subject to the condition that the inputs have been received directly by the manufacturer of the final products from the factory of the manufacturer under the cover of invoice declaring that the appropriate duty of excise has been paid on such inputs under the provisions of Section 3A of the Act. It has not been disputed by the Revenue that the invoices under the covers of which the inputs were received by the appellants, did bear the declaration that "goods cleared under Rule 96ZP(3) duty deposited Rs. 2,10,800 per month". In view of this specific declaration made by the supplier of the inputs, it cannot be claimed by the Revenue that the appellants had not taken reasonable steps to ensure that the appropriate duty had not been paid on the inputs. The mere fact that they were regular customers of M/s. Dheman Industries Ltd., the knowledge cannot be attributed to them that the appropriate duty had not been discharged by M/s. Dhiman Industries Ltd. In any case, it has not been disputed by the Revenue that M/s. Dhiman Industries Ltd, have discharged duty liability for the period from April 1999 to November 1999 as fixed by the Commissioner. The learned Advocate for the appellants had brought on record a letter dated 1.3.2004 from the Supdt. of Central Excise, Range IV, Mandi Gobindgarh addressed to Supdt. of Central Excise, Range-III, Division-II, Ghaziabad. In view of the fact that the appropriate duty had been discharged by the supplier of the inputs, no duty is

demandable from the appellants. We, accordingly, allow all the appeals. (Operative part of order pronounced in Open Court on 12.3.2004).