Commissioner of C. Ex. Vs. Jaycee Coach Builders Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-06-2004

Reported in : (2004)(169)ELT178TriDel

Judge : P Bajaj

Appellant : Commissioner of C. Ex.

Respondent : Jaycee Coach Builders Ltd.

Judgement :

1. In this appeal filed by the Revenue against the impugned order-in-appeal, the issue relates to the denial of Modvat credit of the amount in question to the respondents. I have heard both the sides.

The perusal of the record shows that the adjudicating authority disallowed the Modvat credit of Rs. 5,15,272/- to the respondents and a penalty of Rs. 10,000/- on the ground that the invoices did not contain complete particulars such as the amount of duty paid by the manufacturer and also other particulars required under Rule 57GG. The adjudicating authority even held that some of the invoices were inadmissible on the ground that the quantity and duty element shown therein did not tally with the quantity and duty mentioned by the manufacturer. The respondents challenged that order of the adjudicating authority before the Commissioner (Appeals) on the ground that it was passed ex parte. They produced certain additional documents before the Commissioner (Appeals). But the Commissioner (Appeals) without giving notice to the Department regarding those additional documents, had accepted the same and allowed Modvat credit to the respondents through the impugned order. He should have at least afforded an opportunity to the Department for verifying the correctness of those documents or should have called for the report from the concerned Superintendent/Range Office. He did not do so and decided the matter.

In my view, the impugned order passed by him is violative of the principles of natural justice having been passed without affording an opportunity of hearing to the Department. Therefore, the impugned order is set aside and the matter is sent back to the adjudicating authority for re-examining the case, in the light of the additional documents filed by the respondents, after hearing both the sides. The appeal of the Revenue accordingly stands disposed of.