

Narinder Engineering Works Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-07-2004

Reported in : (2004)(115)LC826Tri(Delhi)

Judge : S Kang

Appellant : Narinder Engineering Works

Respondent : Cce

Judgement :

2. Appellants filed this appeal against the order-in-appeal passed by the Commissioner (Appeals). In this case the benefit of deemed credit under Notification No. 58/97-CE dated 30.8.1997 was denied to the appellants on the ground that manufacturer of the inputs had not discharged the duty.

3. Appellants were availing the benefit of deemed credit in respect of the inputs cleared by the manufacturer who were working under the Compounded Levy Scheme. A show cause notice was issued to the appellants denying the benefit of deemed credit on the ground that invoices were not bearing the declaration that appropriate duty had been paid by the manufacturer. Thereafter, the Adjudicating authority confirmed the demand. The appeal filed by the appellants was 'also dismissed.

4. The contention of the appellants is that the dispute is in respect of four invoices and all the invoices bearing the declaration that appropriate duty has been paid.

Therefore, the demand on the basis that no such declaration was made is not sustainable. The appellants also relied upon the decision of the Hon'ble Punjab High Court in the case of *Vikas Pipe v. CCE, Chandigarh-II* reported in 2003 (59) ELT 976 (P&H).

5. The contention of the Revenue is that the manufacturer of inputs had not paid appropriate duty and the disputes are pending at various stages in respect of fixation on annual capacity for production under Compounded Levy Scheme.

6. In this case the deemed credit was denied only on the ground that appropriate duty has not been paid by the manufacturer of the inputs.

The invoices on the strength on which the credit was taken bears the declaration that appropriate duty has been paid. I find that the issue involved in this appeal is covered by the Punjab & Haryana High Court in the case of *Vikas Pipe v. CCE, Chandigarh-II* (Supra) where the deemed credit was denied on the ground that on verification of invoices, it was found that supplier of the inputs has not discharged the duty liability. The Punjab & Haryana High Court held that where the declaration on the invoices is there, that appropriate duty has been paid the deemed credit, cannot be paid. The Hon'ble High Court held as under: 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 had 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 had in fact not been paid by the supplier the assessee was not entitled to claim Modvat benefit.

Since there is no 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 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.

7. In view of the above decision of Honble Punjab and Haryana High Court, the impugned order is set aside and the appeal is allowed.

[Dictated and pronounced in the Open Court on 7.5.2004.]

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