Commissioner of Central Excise Vs. S.K. Industries P. Ltd.

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SooperKanoon Citation : sooperkanoon.com/35791

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-2004

Reported in : (2004)(172)ELT165TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : S.K. Industries P. Ltd.

Judgement :

1. In this appeal filed by the Revenue, the issue relates to the denial of Modvat credit of Rs. 91,011/- for the period April 98, to the respondents on the strength of invoice issued by M/s. Enkay Texo Food Industries Ltd. (100% EOU).

2. I have heard both the sides and gone through the record. The perusal of the record shows that the adjudicating authority disallowed the credit as the supplier of the goods being a 100% EOU, could not issue invoice under Rules 52A and 173G of the Rules. The Commissioner (Appeals) has reversed the order-in-original of the adjudicating authority by observing that the appellants had rightly taken the credit of duty as mentioned in the invoice. But he has failed to refer to any Rule or Tariff Heading under which duty at such a high rate was payable on the goods supplied by the supplier to the respondents. Apparently such a rate is not prescribed in the Tariff and as such could not be claimed by the respondents. Moreover, the invoice issued by the supplier, who was 100% EOU, was not valid as the same could only be issued under Rule 100E of the Central Excise Rules.

Therefore, the invoice issued was invalid and not proper. The respondents have wrongly availed the Modvat credit. Therefore, the impugned order-in-appeal is set aside and the order of the adjudicating authority is restored. The appeal of the Revenue accordingly stands accepted.