Foranco Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-15-2004

Reported in : (2004)(178)ELT477Tri(Mum.)bai

Judge : M T K.D.

Appellant : Foranco

Respondent : The Commissioner of Central

Judgement :

1. The appeal of the appellants is directed against the order passed by the Commissioner (Appeals), whereby their claim for modvat credit was denied. The credit was denied on the ground that, duty paying documents namely, the bill of entry (B/E) has no endorsement in appellant's favour. The appellants pleaded that, the import was originally made by one M/s. Gujarat Petrosynthese Ltd., who had sold the materials to M/s.

Multichem Pvt Ltd., and the latter sold the said materials to the appellants. The credit has been taken on the basis of bill of entry.

3. It is seen from the order of the adjudicating authority that, the claim of the appellants to the effect that, M/s. Gujarat Petrosynthese Ltd., had approached the Assistant Collector of Customs, Mumbai, (AC) vide their letter dated 05/08/93 itself for recording of the facts of transfer of materials to M/s. Multichem Pvt Ltd., and resale by M/s.

Multichem Pvt Ltd., to the appellants and affixation of an endorsement of the Assistant Collector of Customs on the said letter dated 5/09/93 has been discounted. According to the appellants, the endorsement by the AC on the importer's request dated 05/08/93 shows that, the documents along with material was endorsed in appellant's favour by the importer by M/s. Gujarat Petrosynthese Ltd., 4. Ld. PR brought to my notice that, the adjudicating authority did comment on this fact and in the order-in-original, it has been noted that duty was paid on the goods on 11/08/93 and the importer M/s.

Gujarat Petrosynthese Ltd., made the sale to M/s. Multichem Pvt Ltd., only on 08/09/93 and further sale by M/s. Multichem Pvt Ltd., to the appellants was made on 14/09/93, on account of these inconsistencies it was held by the adjudicating authority that the credit is not eligible.

5. Ld. Advocate for the appellants pleads that because the buyers and sellers are related companies, on the basis of verbal agreements for sale, the request for endorsement of the B/R was made before the AC whereas the actual sale could be after the subsequent date and does not affect the evidence that the goods have actually been purchased from the importers by the appellants and duty paying documents as well as the material has in fact been received in the factory of the appellants. In fact, a certificate from the Superintendent of Central Excise, bears the testimony to the fact that, the goods and the duty paying documents have been received in the appellants factory.

Therefore, substantial right of modvat credit can not be denied even if the duty paying documents contains deficiency.

6. I note that, since the basic fact of receipt of duty paid goods and their utilization in the manufacture of final goods are not in dispute and also, there is no allegation that duty paying documents had gone into the hands of some one else other than the recipient of the imported goods, I hold that the duty paying documents is acceptable as valid document and the credit can not be denied. Accordingly, I allow the appeal and set aside the orders passed by the lower authorities.