iti Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-11-2004

Reported in : (2005)(179)ELT321TriDel

Judge : N T C.N.B.

Appellant : iti Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appeal is directed against the denial of Modvat credit of Rs. 1,70,000/-. There is also equal amount of penalty on the appellant.

2. The submission made is that credit of Rs. 8,511/- has been denied on the ground that the input in question was used in the R&D department of the assessee. The learned Commissioner has relied on the decision of this Tribunal in the case of CCE v. English Electric Co. -1997 (93) E.L.T. 293 in support of this decision. However, the appellant has pointed out that the facts of the case are different and that Tribunal's order has no application to the asscssee's case. It is being pointed out that the inputs in question were not consumed in the R&D wing. They were only tested by R&D for quality and returned to production. Testing of input is a standard practice in manufacture.

That the testing takes place in the R&D wing makes no difference. The inputs admittedly were used in production only and not in R&D department. Denial of credit was not justified. The credit is restored.

The remaining dispute is in respect of credit which was not taken within the period of six months from the date of invoice. It is noticed that this issue remains covered against the assessee by the decision of the Apex Court in the case of Osram Surya (P) Ltd. v. CCE, Indore, 2002 (142) E.L.T. 5 (S.C). The learned Consultant appearing for the assessee, however, points out that the appellant had never utilised this credit and therefore the imposition of penalty was not justified.

Since the credit has not been utilised at all, the imposition of penalty is not justified. The appellant shall reverse the unutilised entry of credit in their books of account. The penalty is set aside.