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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Oct-11-2004

Reported in : (2004)(117)LC968Tri(Bang.)alore

Judge : J Balasundaram, Vice, A M Moheb

Appellant : V.S. Engineering Pvt. Ltd.

Respondent : Cce and C

Judgement :

1. The Commissioner of Central Excise confirmed a duty demand of Rs. 9,64,298/- and imposed a penalty of Rs. 1,00,000/- upon the assessee herein; however, he allowed modvat credit of duty paid on MCI inserts and HTS wire used in the manufacture of the goods in dispute, subject to the production of duty payments documents and after duly complying with the prescribed procedure laid down under the modvat scheme. The assessee is aggrieved by the imposition of penalty and has filed appeal E/655/00 against the penalty while Revenue is in appeal against the extension of modvat credit to the assessee.

3. The duty liability arises as a result of non-inclusion of the cost of HTS wire and MCI inserts supplied free of cost by the Railways, in the assessable value of prestressed mono block concrete sleepers and non-inclusion of the modvat relied on cement in the assessable value of the PSC sleepers manufactured by them during the period in dispute which is 1.7.1997 to 31.12.1997. The duty demand has not been contested and, in fact, has been paid. Therefore, penal action for

contravention of rules for failure to determine correct assessable value, is justified. However, having regard to the facts and circumstances of the case, we reduce the penalty to Rs. 5,000/-. Appeal E/655/00 is thus partly allowed.

4. Coming to the Revenue's appeals, there is no substance in the plea raised that the Commissioner should have taken the aggregate of the price of free supplies and should not have treated the additional value as cum-duty-value. An identical plea raised in the case of CCE, Guntur v. Balaji Fine Chemicals and Engg. Pvt. Ltd. Has been decided against the Revenue, in appeals 313 & 318/2001, as seen from final order No.214 & 215/2004 dated 21.1.2004. Following the ratio of the above order, we dismiss the Revenue's appeals.

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