

Commissioner of Central Excise Vs. Videocon V.C.R. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-17-2004

Judge : A Wadhwa, N T C.N.B.

Appellant : Commissioner of Central Excise

Respondent : Videocon V.C.R. Ltd.

Judgement :

1. The issue involved in the present appeal of the revenue is as to whether the modvat credit availed by the respondents during the period of September 96 to February 97 on the basis of invoices issued by the dealer, who imported the goods, is appropriate or not.

2. The show cause notice was issued to the respondents proposing to deny the above credit on the ground that the invoices were not authenticated by the proper officer. The said notice was adjudicated by the Assistant Commissioner who dropped the proceedings by observing that non-authentication of the invoice was only a minor procedural lapse. Aggrieved with the said order, revenue filed an appeal before the Commissioner (Appeals) who rejected the same by observing as under.

"3. The impugned order, the grounds put forth for review, the cross objections and the submissions made during the hearing have all been considered by me carefully. The dispute is that whether the invoice issued by the dealer which was to authenticated by the proper officer as per the prescribed procedure was valid to

avail the credit. The adjudicating authority held the same as a minor procedural lapse and since there is no dispute regarding the receipt of the inputs for the intended purpose and that the minor procedural lapses are condonable he allowed the credit. Time and again, the Judicial for a has all along been holding that the modvat credit is not deniable if there is any procedural lapse except in cases where there is dispute regarding the receipt of the inputs, duty paying character and its use in the declared final product. These have not been raised either in the show cause notice or in the review proceedings. The order passed by the lower authority is maintainable and does not call for any interference. In the premises the appeal is rejected." 3. After hearing both sides, we find that the Larger Bench of the Tribunal in the case of Kamakhya Steels (P) Ltd. v. CCE. Meerut reported in [2000(40 RLT-575 (CEGAT - L.B.))] has taken note of the Boards Circular No. 441/7/89-CX. dt. 23.02.99, which is to the effect that the credit should not be denied on the minor procedural ground if the said documents contained details of the payment of duty, description of the goods, assessable value, name and address of the factory. As such in the absence of the above dispute, the credit has not been denied. The revenue in their memo of the appeal has contended that the importer could not produce relevant triplicate copies of the Bill of Entry to verify the credit was passed on to the buyer correctly or not.

However, there does not seem to be any dispute, except that the triplicate copies of the bills of entry was not produced, to the findings that the goods were received by the respondents. As such we do not find any merit in the revenue appeal and reject the same.

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