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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-16-2004

Judge : M T K.C.

Appellant : Samtel Electron Devices Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this appeal is whether the appellants are entitled for credit of additional duty of customs on the basis of copy of the bill of entry duly certified by the Customs authorities. The triplicate copy was lost by the appellants in their factory before submission to the Range Officer for defacing the same.
2. The lower authorities have denied the credit on the ground that the bill of entry was not lost in transit between the customs house and the factory of the appellants and they have not produced a certified copy of bill of entry from the proper officer of the Customs before taking credit. They submitted only an attested photocopy of the 4th copy of bill of entry.
3. Shri R. Chibber, Id. Advocate pleaded that the Tribunal has even allowed the credit on the photocopy of the bill of entry duly attested by the Customs and TR-6 challans in case of Commissioner of Central Excise v. SRF Ltd (2000 36 RLT 90). He stated that in the present case they have submitted an attested copy of the bill of entry duly attested by the Customs authorities, therefore, there was no reason for denial of the Modvat credit. He pleaded that in this case, there is no denial of

the receipt of the goods or duty-paid nature of the goods and receipt of these goods in the factory of the appellant. He also referred to the Circular No. 441/7/99-CX dated 23.2.1999 wherein it was clarified that the Asstt. Commissioner should ensure that inputs/capital goods have suffered duty and are being used/are to be used in the process of manufacture. The Asstt. Commissioner before issuing show cause notice for wrong availment of Modvat credit by the assessee on any procedural grounds, shall conduct enquiries with regard to duty-paid nature of the goods as the suppliers send, ensure that necessary information as mentioned in the Notification are available on the invoice and satisfy himself whether the goods have been used or intended to be used as contemplated in the Modvat Rules. Wherever the Asstt. Commissioner after making due inquiry, is satisfied that the Modvat credit taken by the assessee is incorrect, adjudication proceedings in the normal course should be initiated. He stated that in the present case adjudication proceedings initiated on the ground that the bill of entry was not lost for bringing the goods from the Customs House to the factory but it was lost in the factory and the duly attested copy was not accepted by the Asstt. Commissioner and same view was also taken by the Commissioner (Appeals). The Tribunal in case of *Dhaulagiree Polyolefins (Pvt). Ltd. v. CCE, Calcutta-II* (2002 52 RLT 600 (Cegat-Kol) has held that invoice lost during transmission to Superintendent for defacement is also a loss in transit.

4. Shri V. Valte, Id. SDR appearing for the Revenue pleaded that the original authority has held that the party has not produced any certificate from proper officer of Customs before taking credit. The Commissioner (Appeals) relied on the decision of the Larger Bench in the case of *Avis Electronics Ltd.* 2000 (117) ELT 571 (Tri-LB) wherein it was held that if a particular thing is directed to be performed in a particular manner, it has to be done in that very manner. In the present case, the loss was before submissions to the Range Superintendent and so this decision is not in favour of the appellants.

5. On considering the submissions made by both the side, I find that the credit has been denied only on the ground that the appellants had produced attested photocopy of the bill of entry, but did not produce any certificate from proper officer of Customs. I find that this issue has been decided in favour of assessee in case

of SRF Ltd. 2000 (36) RLT 90 (Cegat) where attested photocopy of bill of entry was accepted for taking credit. I find that the appellants have produced the copy of the bill of entry duly attested by the Customs authorities. There is no dispute regarding receipt of the goods and duty-paid nature of the goods. I also find that in the case of Unique Buty Tube Industries (P) Ltd. 2004 (60) RLT 652 (Cestat-Delhi), it was held that on loss of triplicate copy, credit is admissible on Customs attested photo copy of original copy of bill of entry. Therefore, the view taken by the lower authorities, cannot be accepted in view of above decision of the Tribunal. The appeal is allowed with consequential relief, if any.

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