Ballarpur Indus. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-2005

Judge : A T V.K., P Bajaj

Appellant : Ballarpur Indus. Ltd.

Respondent : Cce

Judgement :

1. In this appeal, which has been filed by the appellants against the impugned order-in-appeal, the issue relates to the denied of modvat to the appellant on the goods i.e. Felt to the tune of Rs. 7,27,254 to the period 1.4.1994 to 9.1996.

2. The main ground on which the modvat credit has been sought to be denied to the appellants is that, they had failed to prove the utilization of the same in the factory. This very ground has been reiterated by the learned SDR before us. But we are unable to accept to this ground keeping in view of the facts and circumstances of the case.

So far as the receipt of the goods in question by the appellant in their factory and their duty paid nature is concerned, the same remains undisputed. The only lapse committed by them is that they had failed to maintain proper entries in the RG-23-C, Part-1 Register showing the date of issuance, date of installation and date of starting the use of the goods i.e. Felts as capital goods. For this lapse, the substantial benefit of modvat credit cannot be denied in view of the law laid down by the Tribunal in the case of (1) CCE, Meerut v. Subrose Ltd. 1998 (100) ELT

546; (2) Demosha Chemicals Ltd. v. CCE, Surat, 1999 (107) ELT 443; and (3) Subros Ltd. v. CCE, Meerut, 1997 (96) ELT 602, wherein it has been observed that failure on the part of the assessee to make proper entries regarding the goods in the relevant register will not itself disentitle him to the modvat credit, when the duty paid nature and utilization of the same is not in dispute. In the instant case, as observed above, the receipt of the goods and their duty paid nature is not in controversy. It is also not the case of the Revenue that the goods in dispute has been cleared as such in a clandestine manner by the appellants. Therefore, the ratio of the law laid down in the above cases, squarely covers the case of the appellants for allowing them the modvat credit.

3. In view of the discussion made above, the impugned order is modified. The modvat credit of the amount in dispute is allowed to the appellants, while imposition of penalty is sustained, but the amount of penalty is reduced to Rs. 50,000/- (Rupees Fifty thousand only).