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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-14-2005

Reported in : (2005)(100)ECC553

Judge : S Kang, Vice

Appellant : Cce

Respondent : Karan Engineers (P) Ltd.

Judgement :

2. The Revenue filed this appeal against order-in-appeal passed by the Commissioner (Appeals). The Commissioner (Appeals) in the impugned order held that the show-cause notice was issued by the Superintendent of Central Excise and as per the Board's Circular dated 20.12.88, the Superintendent of Central Excise was not competent to issue the show-cause notice, only the adjudicating authority was competent to issue the show-cause notice. The Commissioner (Appeals) also allowed the appeal on merits by holding that the credit on original invoice is available subject to the satisfaction of the Assistant Commissioner but it does not mean that it somebody does not approach the Assistant Commissioner on loss of duplicate copy of invoice, he will get dissatisfied. Rather his dissatisfaction will be logical and should be based on facts.

3. The contention of the Revenue is that show-cause notice was issued in the month of December 1994 and during the relevant period as per the provisions of Section 11 of Central Excise Act, the proper officer was competent to issue the

show-cause notice and Superintendent of Central Excise was a proper officer for issuing a show-cause notice. The Revenue relied upon the decision of Hon'ble Supreme Court in the case of Pahwa Chemicals Pvt. Ltd. v. CCE 4. On merit the contention of the Revenue is that the respondents availed the credit on the strength of original copy of invoice without seeking any permission from the competent authority and relied upon the decision of Larger bench of the Tribunal in the case of CCE v. Avis Electronics Pvt. Ltd. 5. The contention of the respandels is that the circular issued by the board are binding on the lower authorities, therefore, as per the circular the Supdt. was not competent to issue the show-cause notice.

Therefore, no demand can be confirmed on the basis of show-cause notice issued by the Supdt. of Central Excise. On merit the contention of the respondent is that they had applied for necessary permission for taking credit on the strength of original copy of invoice.

6. The contention of the respondent is that the Supdt. of Central Excise was not competent to issue the show-cause notice in view of the Board's instructions dated 12 December 1988. I find that this issue is now settled by the Hon'ble Supreme Court in the case of Pahwa Chemicals (supra) wherein in respect of similar instructions issued by the board, the Hon'ble Supreme Court held that in view of the provisions of Section 11A of Central Excise Act with effect from 14th May 1992 the proper officer was competent to issue notice and Supdt. of Central Excise was a proper officer. The Hon'ble Supreme Court held that if an officer still issues a notice or adjudicates contrary to the Circulars it would not be a ground for holding that he had no jurisdiction to issue the show-cause notice or to set aside the adjudication. The Hon'ble Supreme Court upheld the view taken by the Tribunal that these are only administrative directions which does not cause any prejudice to the assessee. In view of the above decision of the Hon'ble supreme Court, the finding of the Commissioner (Appeals) that Supdt. was not competent to issue show-cause notice are not substainable and set aside.

7. On merit, it is admitted by the respondent that the credit was taken on the strength of original copy of invoice and without seeking permission to take credit on the strength of original copy of invoice as the duplicate copy of invoice was lost

during transit. This issue is settled by the decision of the Larger Bench in the case of Avis Electronics (supra). The Tribunal held as under:- "In the light of the above finding arrived at by us on question referred to us, we hold that insistence on document evidencing payment of duty on the inputs as prescribed by Rules is not a technically to be complied with for availing Modvat credit.

Observation made by the appellate authority that insistence on duplicate copy of invoice is purely a procedural requirement is against rules so cannot be sustained. When a particular thing is directed to be performed in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise. A combined reading of the provisions contained in the Rules makes it clear that a manufacturer who wants to take credit of the duty paid on inputs must base his claim on the duplicate copy of the invoice. In case the duplicate copy has been lost in transit, he can take credit on the basis of the original. This can be done only if he satisfied the concerned Asstt. Collector about the loss of the duplicate copy i transit." 8. The Larger bench of the Tribunal further dismissed the appeals where the credit was taken without seeking any permission from the proper officer to avail credit on the basis of original copy of invoice on the ground that duplicate copy was lost in transit, the appeals were dismissed. The ratio of the above decision of the Tribunal is fully applicable on the present case as the credit was taken on the strength of original copy of invoice without seeking necessary permission.

Therefore, the impugned order is set aside and the appeal is allowed.

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