

Cce Vs. Usha Engineering Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-21-2005

Reported in : (2005)(103)ECC17

Judge : P Bajaj

Appellant : Cce

Respondent : Usha Engineering Works

Judgement :

1. In this appeal which has been filed by the revenue the issue relates to the denial of the Modvat credit to the respondents of Rs. 3840 availed by them on the basis of invoice wherein the name of the respondents was not shown as consignee, but as buyer.

2. Ld. Counsel has contended that it was only a procedural lapse and the Commissioner (Appeals) as rightly ignored the same. Ld. Counsel has referred the Board's circular in this regard dt. 23.2.99 as also the Tribunal's judgment rendered in the case of Philips (Carbon and Chemical) Carbon Black, 2003 (57) RLT 307 and Malwa Cotton Spg. Mills Ltd. v. CCE, Chandigarh, 3. I have gone through the record and heard Ld. DR also. It remains undisputed that the invoice in dispute No. 0663 was issued by M/s. New Allenberry Works, Kolkata. It also carries the declaration that invoice was issued for clearance of excisable goods from factory or warehouse for home consumption. It had been nowhere mentioned that the goods had been cleared by this invoice by the company, for delivery to the

respondents. The words "clearance for home consumption" were mentioned in the invoice, as the goods were meant for delivery to the company's own office at New Delhi which was also shown as consignee of the goods.

There is nothing on record to suggest that the order for the goods were placed by the respondents directly to the manufacturing company named above. In the column name and address of the buyer, the address of the respondents is no doubt mentioned, but it remains unclarified by the respondent that with whom they placed the order of the goods and from whom they got it. The arguments of the Id. Counsel that the goods were directly received from the manufacturing company and the payment was also made to that company, cannot be accepted for want of any tangible evidence to substantiate the same. Ld. Counsel has now produced a copy of the affidavit before me of one Shri V.K. Girdhar, General Manager of the company at Delhi alleging that material, against the invoice in question, was delivered directly to the respondents and that order was placed with him. This affidavit had been got prepared from him only on 16.2.04, after passing of the impugned order. The facts contained therein also cannot be accepted as there is no letter of the manufacturing company or of its depot at Delhi, for passing the delivery of the goods to the respondents. If the goods were to be delivered to the respondents directly, then they would have been shown as consignee of the goods. Ld. Counsel has also produced before me one certificate of M/s. Nitro Roadways Pvt. Ltd. to show the direct delivery of the goods but this letter has been also got prepared recently after passing of the impugned order, as it is dt. 14.2.04 and neither the full name of the authorised signatory nor the date under his signature, find mention. There is also no reference to the invoice number in the certificate and as such no reliance can be placed on it.

4. The Board's circular referred above does not help the respondents in this case, as the omission of the name of the respondents in the invoice as consignee of the goods, cannot be termed as a technical lapse. At no stage, the respondents ever made any attempt to get this so called technical mistake corrected from the manufacturer. The ratio of law laid down in the case of Natraj Industries v. CCE, referred by Ld. Counsel is also not attracted to the present case. That was a case of disallowance of deemed Modvat credit and the assessee being a Govt.

Undertaking, could not place order directly on the manufacturer of the goods and for these reasons, it was observed that for using the name of the agent for placing order with the manufacturer, the assessee could not be penalised by disallowing the Modvat credit. Similarly the law laid down by Malwa Cotton Spg.

Mills Ltd. (supra) is not attracted to the present case.

5. In the light of the discussions made above, the impugned order to the extent to which it has been challenged in this appeal, is set aside. The appeal of the revenue is allowed with consequential relief as per law.

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