

Polycab Cables Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-06-2005

Judge : S T S.S., T Anajaneyulu

Appellant : Polycab Cables Pvt. Ltd.

Respondent : Cce

Judgement :

1.1 After hearing both sides and finding that the appeal itself could be disposed of, at this stage, after waiver of pre-deposit, the appeal is taken up for disposal.

2.1 Appellants have been denied eligibility of credit as the invoice on which the same was to be availed was not an eligible document under rule 7 (1)(b) of the Cenvat Rules since the subsequent duty discharge was alleged to be tainted with the act of a recovery confirmed on penalty on the supplier of the goods.

2.2 The Ld. Advocate for the appellants produced the decision of this Tribunal in Appeal no. E/2351, 2352/04 No. A/351, 352/WZB/05-CII dated 21.2.2005, wherein the Bench had found that the duty paid by the manufacturer was on own without the department having pointed out an error as was evident from the notice issued to that manufacturer, after ten months of the payment. Therefore, the penalty was set aside.

2.3 Since the subsequent payments of duty by the manufacturer have not been held to be tainted with penalty any longer, the denial of credit under Rule 7(1)(b)

cannot be upheld as regards the appellants herein.

Consequently, the order cannot be upheld and is to be set aside.

3.1 Ordered accordingly. We set aside the impugned order and allow the appeal.

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