

Cce Vs. K.M. Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-20-2005

Judge : P Bajaj

Appellant : Cce

Respondent : K.M. Industries

Judgement :

In this appeal the Revenue has contested the correctness of the impugned Order passed by the Commissioner (Appeals) allowing the deemed Modvat Credit to the Respondents in terms of Notification No.58/97-CE(NT) dated 30.8.97.

2. I have heard both the sides and gone through the records. The deemed Modvat Credit has been sought to be denied to the Respondents on the strength of the invoices issued by supplier/ manufacturer of the goods namely, M/s. Agarwal Iron & Steel Industries, M/s. Devta Steel Rolling Mills, M/s. Mahabir Steel Rolling Mills and M/s. Surinder Steel Rolling Mills. So far as first two suppliers/manufacturers' invoices are concerned, the deemed Modvat Credit in respect thereof on the inputs covered thereunder, has been rightly allowed to the Respondents as they had submitted a certificate from the Range Officer showing the discharge of full duty by both the suppliers at the time of clearances of the inputs to the Respondents.

3. Regarding invoices of M/s. Mahabir Steel Rolling Mills, in my view, the Commissioner (Appeals) has wrongly allowed the deemed Modvat Credit as their

invoices carried the declaration "Duty liability to; be discharged." This declaration did not satisfy the conditions laid down in Notification No. 58/97-CE for claiming the deemed Modvat Credit. The Argument of the Counsel that declaration regarding actual discharge of the duty by the supplier of the inputs, could not be given as the duty had been made payable on or before 10th of every month under the Rules.

But this contention of the Counsel is misconceived. The perusal of the above said Notification reveals that the declaration has to be specific regarding actual discharge of the duty by the supplier/ manufacturer while clearing the goods. The declaration given by the supplier M/s.

Mahavir Steel Rolling Mills did not indicate so, rather only reflected that the duty liability was yet to be discharged by him. No doubt the dispute regarding ACP determination of this supplier was pending and the matter was remanded by the CESTAT to the competent authority for re-determination but there is nothing on record if according to the re-determination of the ACJ, the duty had been discharged by him. That being so the Commissioner (Appeals) has erred in allowing the Modvat Credit on the basis of invoices issued by this supplier, to the Respondents. Therefore, the impugned Order in this regard cannot be sustained and is set aside.

4. In view of the above discussion the impugned Order of the Commissioner (Appeals) stands modified. The appeal of the Revenue stands disposed of accordingly.

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