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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-20-2005

Judge : A Wadhwa

Appellant : Surendra Spring (P) Ltd.

Respondent : The Commissioner of Central

Judgement :

1. After dispensing with the condition of pre-deposit of duty amount of Rs. 43,392/- and penalty of Rs. 10,000/-, I propose to take up the appeal itself for final disposal.

2. The above amount has been confirmed against the appellants by denying them the benefit of modvat credit on the ground that the same was not taken on the basis of duplicate copy of the invoice or the original copy. It is appellant's case that duplicate as well as original copies were lost by the transporter, as a result of which, they also lodged a FIR with the police. transporter's affidavit was also produced before the authorities. Subsequently, they procured triplicate copy of the invoice from the manufacturer's suppliers of the inputs, got it verified by the range Superintendent and took the credit on the basis of the same. Ld. Advocate appearing for the appellant's draws my attention to the findings of the original adjudicating authority, wherein he has not disputed the fact of receipt of the goods in the appellant's factory or duty paid character of the same. In these circumstances, Ld. Advocate submits that there was no justification for denial of credit. Reliance has also been placed upon the Larger Bench's decision of the Tribunal in the case of Kamakhya Steels (P) ltd, v.CCE, Meerut, (2000 (121) ELT

247 (Tri.) and the Tribunal's decision in the case of Dhaulagiree Polyolefins (Pvt) Ltd, v. Commissioner of Central Excise, Calcutta-II reported in 2002 (147) ELT 843 (Tri.

Kolkata).

3. After hearing the Ld. DR, I find that the modvat credit has been denied on the sole ground that there was no provision under the Central Excise law to allow the credit on the basis of certified triplicate copy. However, I find that the appellants have taken reasonable steps to show that the original as well as duplicate copies of the invoices were lost during transit, and there is no dispute about duty paid character of the inputs and their receipts in the appellant's factory.

As such, I am of the view that merely because the invoice copies were lost, the substantive benefits, which is otherwise available to the appellants, should not be denied. This was the ratio of the Tribunal's decision in the case of Dhaulagiree Polyolefins (Pvt.) Ltd, referred supra. Otherwise, also I note that the provisions of Rule 57G were amended when sub-rule was introduced. the effect of sub rule is where the Assistant Commissioner is otherwise satisfied about the receipt of the duty paid inputs, procedural rules should not be made the basis for denial of credit. In the present case, the Assistant Commissioner has observed that the appellants had received the inputs. In this view of the matter, I set aside the impugned order and allow the appeal with consequential relief to the appellants.

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