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Cce Vs. Devta Steel Rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-05-2005

Reported in : (2005)(102)ECC373

Judge : P Bajaj

Appellant : Cce

Respondent : Devta Steel Rolling Mills

Judgement :

1. In this appeal which has been filed by the Revenue against the impugned Order-in-Appeal, the issue relates to the denial of the Modvat credit of Rs. 41316 to the respondents.

2. I have heard both the sides. The Modvat credit has been sought to be denied to the respondents by the revenue on the ground that the manufacture of goods did not discharge the duty liability while clearing the goods from the factory premises to the dealer. Ld. Counsel has contended that the respondents have purchased the goods from the registered dealer and dealer gave the reference to the invoice of the manufacturer, also at the time when he sold the goods to the respondents. Therefore, respondents have not violated any provision of the law and as such credit cannot be denied to them. This contention of the Counsel is wholly misconceived and cannot be accepted. When the manufacturer of the goods did not discharge the duty at the time of clearances, the question of the dealer passing on modvatable invoices to the respondents did not arise. The respondents cannot

take shelter under the plea that they have purchased the goods from the registered dealer. The Registered dealer was required to show that he had received the goods under the duty paid documents. He, in the instant case, has failed to prove this fact. Therefore, he could not pass on modvatable invoices to the respondents, in order to facilitate them to claim the Modvat credit, when the goods at his ends, were not duty paid.

Therefore, the impugned order of the Commissioner (Appeals) allowing the Modvat credit to the respondents cannot be sustained and is set aside. The appeal of the revenue is allowed.

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