Engineering Products and Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/39624

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-07-2005

Reported in : (2005)(188)ELT429Tri(Mum.)bai

Judge : S T C.

Appellant : Engineering Products and

Respondent : Commissioner of C. Ex.

Judgement :

1. Heard both sides. In this case the appellants have utilized Modvat credit in respect of duty paid goods received back for repair and reconditioning which were cleared on payment of duty. The Original Authority had allowed the credit to the appellants but the Lower Appellate Authority has reversed the order on Department's appeal. The learned D.R. has cited the decision of the Tribunal in the case of Bharat Gears Ltd. v. C.C.E., Mumbai-III - 1996 (87) E.L.T. 668 (Tribunal) and Collector of C.E., Bombay-I v. Sigma Paints Ltd. -1994 (69) E.L.T. 779 (Tribunal) in support of the Department's case whereas the learned Advocate has cited the decision of the Tribunal in the case of C.C.E., Coimbatore v. Hirsch Watch Straps Pvt. Ltd. - 1997 (91) E.L.T. 174 (Tribunal) in support of the appellant's case. I find that these decisions are contradictory. In the circumstances of this case, I am of the view that the Original Authority has rightly allowed the duty credit and has imposed no penalty considering the fact that credit has been taken only to the extent of duty paid. Denial of the credit would result in payment of duty twice on the same goods which admittedly have been only repaired and

reconditioned. Accordingly, I set aside the impugned order-in-appeal and restore the order-in-original.