

Lakshmi Wire Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-11-2005

Reported in : (2006)(193)ELT511TriDel

Judge : P Bajaj

Appellant : Lakshmi Wire

Respondent : Commissioner of Central Excise

Judgement :

1. The above captioned two appeals have been directed against the common Order-in-Appeal vide which Commissioner (Appeals) has affirmed the Order-in-Original denying the Modvat credit of the amount in dispute for the period in question, as detailed therein, with penalty to the appellants.

2. I have heard both the sides. The Modvat credit has been sought to be denied solely on the ground that Shri R.K. Gupta, supplier of the goods allegedly in his statement during investigation, disclosed to the officers that only 50% invoices issued by him were genuine and rest of the 50% were bogus. But in my view, his testimony did not advance the case of the revenue against the appellants. Shri R.K. Gupta at the rele/ant time was a registered dealer. From his statement it is evident that he admitted that the invoices which he issued on the same date on which he received the goods from the first stage dealer, and did not cover more than 6 tonnes of goods, were genuine, while the others were bogus. The perusal of the chart/annexure, appended to the SCN reveals that all these invoices in

question (11 in number) were issued by Shri R.K. Gupta to the appellants, on the same date on which he received the goods from the first stage dealer and the quantity of goods covered under those invoices, was less than six tonnes. He was not confronted with these invoices in question during investigation and he even of his own did not specifically denied the issuance of the same along with goods, to the appellants. No statement of any proprietor/partner of M/s. Jain Tar Udyog from whom Shri R.K. Gupta received the goods, was recorded to the effect that the goods were never supplied by that firm, to Shri R.K. Gupta. Under these circumstances, general statement of R.K. Gupta referred above, could not be used against the appellants for denying the Modvat credit on the goods received by them under the cover of duty paid invoices. There is also no evidence on the record to suggest that the goods were not actually received by the appellants or that the goods were not utilised by them in the manufacture of final product. Therefore, appellants could not denied Modvat credit of the amount in dispute.

3. In the light of the discussions made above, the impugned order denying Modvat credit and imposing penalty as detailed therein, cannot be sustained against the appellants and the same is set aside in toto.

The appeals of the appellants are allowed with consequential relief as per law.

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