SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Commissioner of Central Excise Vs. Roha Dye Chem Ltd.

Commissioner of Central Excise Vs. Roha Dye Chem Ltd.

SooperKanoon Citation : sooperkanoon.com/40642

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-26-2005

Reported in : (2006)(104)ECC521

Judge : S T T.V.

Appellant : Commissioner of Central Excise

Respondent : Roha Dye Chem Ltd.

Judgement :

1. This is a case in which the Respondents (Roha Dye Chem Ltd.) debited the modvat credit amounting to Rs. 1,24,177/- under protest when the auditors had visited their premises though no show cause notice was issued to them. Subsequently, they filed a refund application which was promptly rejected by the lower authority on the plea that the Tribunal's judgment in the case of Polynose India Pvt. Ltd. relied upon by them has been referred to the High Court by the Department.

2. Being aggrieved, the appellants filed an appeal before the Commissioner (Appeals), who observed as follows: It is not the subject matter of this appeal whether cenvat credit was admissible to those products imported by the appellants on which CVD was paid through DEPB Scheme. It is revealed from the records, that the cenvat credit was reversed by the appellants on 13.03.2001 under protest and no show cause notice was issued to them demanding duty under the provisions of Section 11A. Therefore, a conclusion has to be drawn that, the said

amount collected by the department was erroneous and without authority of law. Thus, the said amount needs to be refunded back to the appellants.

3. Aggrieved by the said order of the Commissioner (Appeals) Revenue has filed this appeal. The main contention is that as per para 3.4.5 of the Exim Page 523 Policy in cases where the additional Customs duty is adjusted from DEPB, no benefit of cenvat shall be admissible. As the licensing authority itself does not permit the benefit of CENVAT, as such the question of allowing the credit does not arise.

4. The Ld. Jt. CDR reiterates the grounds of appeal. The Ld. Advocate points out that no show cause notice was issued to the respondents and they had to undergo a loss and inconvenience due to vagaries of provisions. He further brings forth the following decisions of the Tribunal which indicate that a show cause notice should be served with cogent reasons for confirming the credit: -(Tri. Kolkata) Saltake Electronics (P) Ltd. v. Commissioner of Central Excise, Calcutta(Tri. Chennai) Commissioner of Central Excise v. Ravishankar Industries Ltd. (d) Steel Products Ltd. v. Commissioner of Central Excise, (a) Polyhose India Pvt. Ltd. v. Commissioner of Central Excise, Chennai (b) Essar Steel Ltd. v. Commissioner of Central Excise, He argues that though in the case of Polyhose India Pvt. Ltd. the Tribunal had allowed modvat credit in terms of documents of bill of entry, in the second case (Essar Steel Ltd.) the Tribunal disallowed modvat credit taken by the assessee against the demand made in the DEPB book.

6. I have examined the case records and heard both sides. I am of the view that ends of justice would be met if the case is remanded back to the lower authority with a direction to issue an appropriate show cause notice with cogent reasons and thereafter following the principles of natural justice, pass a speaking order afresh.

7. In the result, I set aside the impugned order passed by the Commissioner (A) as well as the order-in-original passed by the Assistant Commissioner of Central Excise.

8. The appeal is allowed by way of remand to the adjudicating authority.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com