Ccex Vs. Novel Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-10-2006

Reported in : (2006)(105)ECC199

Judge : S T Chittaranjan

Appellant : Ccex

Respondent : Novel Industries

Judgement :

1. Heard Shri K.L. Bablani, learned Jt. CDR and Shri U.H. Jadhav, learned JDR for the department. None appeared on behalf of the respondents. There is also no adjournment request. The learned DRs state that the department's appeal is restricted to the amount of Rs. 3,26,614/-, being the Modvat credit, which was disallowed by the original authority on the ground of non-submission of duty paying documents (Rs. 98,991/-) and for non-declaration of the inputs (Rs. 2,27,623/-).

2. It is the grievance of the department that the lower appellate authority has allowed the disputed amount of Modvat credit merely stating that there is no dispute regarding the duty paid character of the disputed inputs and utilization thereof, whereas there are no details given by him as to how the lower appellate authority has reached such a finding. The learned DRs also contend that in view of the Larger Bench decision in the case of CCE, New Delhi v. Avis Electronics Pvt. Ltd. , when a particular thing is directed to be performed in a manner prescribed by

rules, it should be performed in that manner itself and further that Page 0201 production of duty paid document is a mandatory requirement and not a mere procedural technicality.

3. The learned DRs have also cited the following decisions of the Tribunal:CCE, Chandigarh v. Kirpal Alloys (P) Ltd. They contend that: filing the declaration and obtaining the date of acknowledgement of the said declaration are statutory requirements for taking Modvat credit. These contentions of the department remain uncontroverted by the respondents.

4. In view of the fact that the respondents have not filed any declaration in respect of the impugned inputs and have also not furnished the required duty paying documents, there is a breach of the statutory provisions. It is also not the case of respondents that they have filed the declarations afterwards nor have they asked for condonation of delay. Similarly, I also find no explanation from the respondents as to why the duty paying documents could not be furnished by them. Hence, it is held that they are not entitled to Modvat credit in question amounting to Rs. 3,26,614/-. Accordingly, the impugned order passed by the lower appellate authority is set aside to the extent appealed against and the order-in-original is restored.