Om Textiles Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-13-2006

Reported in : (2006)(107)ECC27

Judge : S T T.V.

Appellant : Om Textiles

Respondent : Cce

Judgement :
1. The appellants, M/s Om Textiles, had received a consignment of PVC Coated Man Made Fabrics in respect of which they took modvat credit.

The Department noticed that the address indicated on the invoice showed M/s Om Textiles, Mumbai, instead of the consignees address at New Delhi. A show cause notice was issued to them asking them why the credit should not be denied. The documents being invalid, both the Deputy Commissioner of Central Excise and the Commissioner (Appeals) have held that the document was invalid and, therefore, they denied the credit.

2. Being aggrieved by the orders of the authorities below, the appellant has filed this present appeal. The learned Counsel for the appellant states that the receipt and use of the subject goods has not been questioned by the Department, but the issue involved relates only to the validity or otherwise of the documents which bore a wrong address and which was a human mistake. He also contends that the

learned Commissioner (Appeals) in his order-in-appeal has gone much beyond the tether of the show cause notice holding that the appellants failed to prove receipt of the goods and so took wrong credit on invoice originally in favour of a party at Mumbai, although by name as that of appellants. He points out that nowhere in the show cause notice, fact that goods were received was questioned by the Department.

3. The learned Authorised Departmental Representative (ADR), contends that the appellants have been given adequate opportunity to prove that the invoice was not invalid by prodjucing documentary evidences, such as, transport documents, consignment goods, books of accounts etc.

indicating the payment made by them to the suppliers and so on and so forth, so as to prove the point that the invoices received by them along with the goods was genuine and not invalid. He also states that once the invoice is invalid, the receipt of the goods or otherwise is immaterial. Rather he argued that the fact of receipt of the goods has to be proved by a valid invoice which was not there in this case.

4. The learned Counsel states that the relevant invoice was got corrected subsequently from the supplier to indicate their correct address Here it is not a question, whether the invoice was subsequently corrected or corrected earlier as in the case of Raymond Ltd. v. CCE, Bhopal 2005 (69) RLT 182, in which case the name and address was challenged before the supply of goods and the same invoice was accepted to be valid. Adopting the same ratio in the present case also, the invoice can be taken as a valid invoice keeping in view the circumstances. To support his point, he also relies upon the Board's Circular No. 441/7/99-CX dated 23.2.1999 which directs that the Asstt.

Commissioner of Central Excise who ignored minor procedural lapses in filing the deciaration or in the invoice/document based on which credit is to be taken.

5. I have heard both sides and examined the case records. Having regard to the facts and circumstances of the case and also after going through the details of the show cause notice issued which refers to the validity of the invoice only and not the fact whether the goods were received in the factory premises or otherwise, and

also taking into consideration the ratio adopted in the case of Raymond Ltd. v. CCE, Bhopal supra, the orders passed by the lower authorities are hereby set aside and the appeal is allowed.