Cce Vs. Himachal Exicom Communication

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SooperKanoon Citation : sooperkanoon.com/41706

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-06-2006

Judge : M Ravindran

Appellant : Cce

Respondent : Himachal Exicom Communication

Judgement :

1. This appeal is filed by the Revenue against the order-in-appeal dated 16.12.2003 wherein the learned Commissioner has allowed the credit of Modvat to the respondent.

2. The issue involved in this case is that the respondents imported some goods and availed Modvat credit in respect of the Bill of Entry in their RG 23 A Part-II on 17.2.96, which according to the Department is beyond the specified limit by one day and hence the respondents are ineligible for availing the Modvat credit.

3. Considered the submissions made by both sides and perused the records. I find that the respondents imported the inputs against Bill of Entry No. 910236 dated 11.8.95 and availed Modvat credit of Rs. 1,72,753/- and due to some problems, availed the balance credit of Rs. 1,57,922/- on 17.2.96. The department's contention in this case is that the date on which the respondents availed the credit i.e. 17.2.96 is beyond the period of six months, as provided in the law for availment of credit, It was contended that Rule 57G prohibits to avail the credit beyond six months of the date of the issue of the duty paying documents. I find

from the records that the appellants have filed the Bill of Entry dated 11.8.95 but after all the formalities of Custom, they paid the duty and took the delivery of the goods at New Delhi on 17.8.95. The said goods were transferred from New Delhi to their factory at Solan, Himachal Pradesh which reached on 20.8.95. Due to some minor problems in the duty paying documents i.e. Bill of Entry, they availed the credit on 17.2.96. To my mind, the appellants' availment of credit on 17.2.96 is not beyond the period of six months from the date of issue of the Bill of Entry because Bill of Entry was assessed by the Customs Authorities on 17.8.95 appellant paid duty on that date and received the goods subsequently. The period of six months has to be calculated, from 18.8.95. If we consider the date of payment of duty as 18.8.95, as date of the duty paying document, in that case the appellants have availed Modvat credit on 17.2.96 i.e. on the last date of the time limit as granted under Rule 57G. Further, I find that in the case of Bullows Paint Equipment. (P) Ltd. v. CCE reported at 2001 (138) ELI 1098 (Tribunal), it was held that, "date of filing of Bill of Entry has no relevance to the physical movement of the goods covered thereunder. No certainty that goods covered thereunder would be received in user's factory within period prescribed under erstwhile Rule 57G of Central Excise Rules, 1944". I find that even on this aspect the appellants' case is covered by the decision of the Hon'ble Tribunal as noted above.

4. In view of the facts and circumstances, the Commissioner's (Appeals) order allowing the respondent to avail the credit on the goods on 17.2.96 is correct order and deserves to be upheld, I do so and Department's appeal is dismissed.