Commissioner of Central Excise Vs. Sweet Confectionery

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-11-2006

Reported in : (2006)(111)ECC531

Judge : T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Sweet Confectionery

Judgement :

2. The issue involved in this appeal is whether the Cenvat credit is admissible on duty paid coconut punch chocolates received in the factory and cleared in small pack along with coffee bite pack and the cenvat credit is utilized towards payment of duty on final products.

3. The adjudicating authority has disallowed the cenvat credit to the tune of Rs. 1,36,357/- along with interest under Rule 12 of Cenvat Credit Rules, 2002. On filing an appeal by the assessee, the Commissioner (Appeals) set aside the order by observing that the respondents were receiving the duty paid coconut punch chocolates in bulk packs, and thereafter they repacked the said coconut punch chocolates into small pouches and packed the said pouches along with coffee bite chocolates in bigger packs and paid Central Excise duty on the MRP printed on the said packs. The Board Circular has clarified that in such situations the MRP printed on the multi-piece packages would be considered for payment of duty. Further, the Commissioner (Appeals) has placed the reliance on the case law of

Kothari Products Ltd. v. CCE and CCE v. M.P. Telelinks Ltd. 2004 (68) RLT 257 and held that there were no merits in the Department's appeal.

4. The contention of the Department is that the ratio involved in both decisions referred above is not applicable to the facts of the present case In Kothari Products case, the assessee said to have reversed the credit availed when own units supplied free of cost and whereas in the instant case the assessee had availed Cenvat credit on coconut punch chocolates, but not reversed credit on the said chocolates, when supplied with above coffee bite chocolates.

5. The impugned order is not clear as to whether the learned Commissioner (Appeals) verified the facts of Kothari Products and M.P Telelinks cases and applied the ratio evolved therein to the facts of the present case. Therefore, it is quite felt expedient that the matter should be remanded back to the Commissioner (Appeals) for verification of facts and applicability of the ratio of the aforesaid decision to the present case and also consider such other points as brought before him during personal hearing and dispose of the case afresh.

Accordingly, appeal is allowed in remand in above terms.