Commissioner of C. Ex. Vs. Sunder Castings Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-16-2007

Reported in : (2008)(223)ELT59Tri(Mum.)bai

Judge : A Wadhwa

Appellant : Commissioner of C. Ex.

Respondent : Sunder Castings Pvt. Ltd.

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals), revenue has filed the present appeal.

2. After hearing both sides, I find that the short issue involved is as to whether the respondents are entitled to avail the benefit of Modvat credit on the basis of endorsed Bill of Entry or not. While allowing the appeal, the Commissioner (Appeals) has observed as under: I have carefully gone through the case records as well as submissions made by the appellants. As regards modvat credit of Rs. 2,65,272/-, it is seen that same has been taken on a bill of entry which has been endorsed to the appellants for partial quantity of 663.180 mts. In this regard, I find that the relevant bill of entry No. 19 dated 5-7-89 is endorsed for a partial quantity of 663.180 mts. In favour of the appellants. The appellants have produced a copy of the certificate dated 23-9-94 issued by Supdt. Central Excise, A.R. Limbdi certifying that a quantity of 663.180 mts. of shredded scrap received under the said bill of entry has not been utilized by M/s. Saurashtra Steel Industries Ltd.

Limbdi. A copy of another certificate dated 3-6-94 issued by Supdt. Central Excise, Sawantwadi has also been produced by the appellants which certifies that the appellants have received and used 663.180 mts. of the shredded scrap received under Bill of Entry No. 19 dated 5-7-89 for the manufacture of iron and steel products. In such circumstances, the receipt and use of the 663.180 mts. of shredded scrap received under the impugned bill of entry is not in dispute. The duty paid character of the goods is also not in dispute. In this regard, the Tribunal decisions in the case of Maharaja International Ltd., v. CCE, JaipurSaurashtra Industries Ltd. v. CCE New Delhi 1995 (7) RLT 59 and Kay Polyplast Ltd. v. CCE Jaipur are relevant wherein it has been held that the endorsed bill of entry does not cease to be a bill of entry and for that reason, modvat credit is not deniable. Thus modvat credit of Rs. 2,65,272/- is admissible. As regards the modvat credit of Rs. 2,130/-taken on invoice issued in the name of M/s. Margao Scrap Traders and endorsed in favour of the appellants, I find that the above case laws relied upon by the appellants are squarely applicable in this situation also Moreover, the receipt, use and duty paid character of the inputs are not in dispute. Therefore, modvat credit of Rs. 2,130/- is also admissible. In view of the above, there is no merit in the stand of the department.

3. As against the above observation, I find that the revenue has not challenged the fact of duty paid character of the inputs, their receipts in the assessee's factory and utilization of the same in the manufacture of the final products. They have assailed the order on the technical ground that inasmuch as it was only a part of the goods covered by bill of entry, which were sold to the assessee and not the entire imported consignments in original packing, ratio of the relied upon decision will not apply.

4. I find no merits in the above technical objection of the revenue.

Admittedly, the goods were part of the imported consignments on which duty was paid and were delivered to and received by the respondents, in which case denial of benefit on the procedural ground would not advance the cause of justice. Accordingly, I find no infirmity in the view adopted by the Commissioner (Appeals). The appeal filed by the revenue is rejected.