Cce Vs. Adhunik Packages (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-13-2007

Reported in : (2008)(127)ECC47

Judge : P Das

Appellant : Cce

Respondent : Adhunik Packages (P) Ltd.

Judgement :

1. Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the respondent.

2. In this case, Credit has been denied on the ground that the respondent failed to produce Sales Tax Form ST-XXVI-A. It is presumed that the respondent had not received the inputs in their factory. The Commissioner (Appeals) allowed the appeal of the respondent. The Revenue filed this appeal against the order of the Commissioner (Appeals).

3. Ld. DR on behalf of the Revenue reiterates the grounds of the appeal filed by the Revenue. Ld. DR submits that Rule 57G(3) of the erstwhile Central Excise Rules, 1944 provides that no Credit under Sub-rule (2) is admissible unless inputs are received in the factory under the cover of the documents specifying therein the details of such goods along with the transporting vehicle numbers etc. He submits that the respondent failed to produce the ST forms, which is issued by Sales Tax

Authority for production of the goods from one state to another. Thus, it is clearly evident that the respondent did not receive the goods at the factory.

4. After hearing the ld. DR and on perusal of the records, the relevant portion of the Commissioner (Appeals) is reproduced below: I have carefully examined the case records including the appellants submissions made in writing and at the time of personal hearing and observed that the demand in question has been confirmed only on the ground that the entry of the inputs was not found in the records of the ST Tax/Barrier. As there is no provision under the Central Excise Law for the requirement of producing any ST-XXVIA forms failing which the material would be treated to have not been received and credit would be disallowed. In terms of Central Excise Law the receipt of inputs is established from the statutory Central Excise Records. Moreover, the appellants have made the payment of these inputs to the supplier through Account Payee Cheques/Drafts in their favour and the Department has not denied the same in the Order-in-Original. These cheques have been realized and encashed by M/s. K.C. which is clear cut proof of the fact that they have supplied the required material to the appellant and they in turn have used the inputs in the manufacture of final product.

The above submission of the appellant has been supported by the documentary evidence such as invoices, receipts of the inputs in their statutory records, clearance of the finished goods from the factory on payment of duty and availment of payment through Account Payee Cheques by the consignor of inputs i.e. M/s. K.C. and realization/encashing of these cheques in their account etc." 5. It is seen that in the Grounds of Appeal, it is contended by the Revenue that the requirement of ST-3 Form is not necessary for the purpose of availing Cenvat Credit. The contention of the Revenue is that the respondent failed to produce ST-3 forms and, therefore, they are not entitled for availment of Cenvat Credit on the presumption that the goods were not received by them. On the contrary, it is seen from the order of the Commissioner (Appeals), thus the Commissioner (Appeals) examined the various evidences of the respondent that they received the goods at their factory, which were not disputed by the Revenue in their appeal. Therefore, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.