Commissioner of Central Excise Vs. Crompton Creaves Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-07-2008

Reported in : (2008)(127)ECC129

Judge : S T A.K.

Appellant : Commissioner of Central Excise

Respondent : Crompton Creaves Ltd.

Judgement :

1. Revenue is in appeal against the Order-in-Appeal No Goa/CEX/BBP/110/2006 dated 8.11.2006 passed by the Commissioner (Appeals) of Central Excise & Customs, Goa. The Commissioner (Appeals) has allowed the appeal filed by M/s Crompton Greaves Ltd (hereinafter referred to as the respondents) against Order-in-Original No DCC Ex (Div I) 13/2006-07 dated 21.6.2006 passed by the Deputy Commissioner of Central excise, Division I, Panaji, Goa, in which the Deputy Commissioner has disallowed Cenvat Credit of Rs 57,647/- and Education Cess of Rs 1152/- availed on TR6 Challan during the period from 1.1.2005 to 15.6.2005 and ordered recovery of the said amount along with interest and imposed a penalty of Rs 10,000/-.

2. The respondents are the manufacturers of electric fans falling under Chapter 84 of the Schedule to the Central Excise Tariff Act, 1985. They are availing facilities of Cenvat Credit on inputs, capital goods and on the input services as provided under Rule 3 of the Cenvat Credit Rules, 2004.

3. The issue involved in this case is regarding the availment of the Service Tax Credit in respect of the Service Tax paid on the Goods Transport Agency Services during the period 1.1.2005 to 15.6.2005.

There is no dispute as to the eligibility to the credit but the dispute is only regarding whether the respondents in this case could avail the credit on the basis of the TR6 Challan.

4. Shri Pramod Kumar, the Ld JDR appeared on behalf of the appellant.

None appeared on behalf of the Respondents.

5. The Ld J.D.R., relying upon the Larger Bench decision of the Tribunal in the case of CCE, New Delhi v. Avis Electronics Pvt. Ltd. , pointed out that when a particular thing is directed to be performed in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise. Since the TR6 challan is not a valid document to avail the Cenvat Credit during the impugned period, the J.D.R. contended that the Cenvat Credit has been rightly disallowed by the Deputy Commissioner and the same should be upheld.6. I have examined the position. I find that the reliance placed by the J.D.R. on the Larger Bench decision of the Tribunal in the case of CCE, New Delhi v. Avis Electronics Pvt. Ltd. is misplaced.

In the instant case, the Rules do not prescribe any document for availment of Service Tax Credit during the impugned period in respect of the Service Tax paid on the Goods Transport Agency Services.

7. Therefore, this judgment is not applicable at all to the facts of the present case. I further find that the issue involved in the instant appeal filed by the Revenue is no longer res integra. The Hon'ble Tribunal in Order No. A-1358 to 3561/WZB/MUM/2007C-IV/SMB dated 25.9.07 has held as under: I agree with the reason adopted by the Commissioner (Appeals). The Revenue in their appeal has no where contended as to what was the specified document for availing credit during the relevant time. If no document was mentioned, TR-6 challan has to be considered as the proper document reflecting payment of duties. Further, it is also

not the Revenue's case that the service tax was not paid by the Respondents or they were otherwise not entitled to the credit of the same.

8. Following the ratio of the above cited Tribunal's order dated 25.9.07, I hold that the impugned order passed by the Commissioner (Appeals) is sustainable. The same is upheld. The appeal filed by the Revenue is dismissed.