

Collector of Central Excise Vs. Memory Steel Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-07-1990

Reported in : (1990)(26)ECC338

Appellant : Collector of Central Excise

Respondent : Memory Steel Pvt. Ltd.

Judgement :

1. This appeal is directed against the order-in-appeal bearing No.V-2(72)2090/88, dated 27-10-1988 passed by the Collector of C. Excise (Appeals) setting aside the order in Original No. SRT-III/D-89/88, dated 7-6-1988. The department has come in appeal.

2. Heard Shri Mondal and Shri Willingdon Christian. Shri Mondal during the course of argument challenged the order of the Collector of Cen.

Excise (Appeals) and submitted that the view taken by the Collector (Appeals) is not proper and that the order passed by the Asstt.

Collector should be restored.

3. Considering the position, it appears that the demand raised is on account of wrong availment of modvat credit on Bazar Scrap of Iron and Steel. The credit was taken during the period from April, 1986 to September, 1986, for which a show cause notice demanding the duty amount was issued on 8-6-1987 by the Supdt. invoking the provisions of Rule 57-I. The matter was adjudicated by the Asstt.

Collector who passed the order dated 7-6-1988 confirming the demand.

4. This Bench has been taking a consistent view that even for demanding reversal of the credit already taken under Rule 57-I, the provisions of Section 11A would stand attracted and the demand has to be raised within the period of six months. Here that has not been done. The show cause notice issued has not spelt out any suppression or any mis-representation. The notice was issued by the Supdt. and the adjudication was made by the Asstt. Collector confirming the demand beyond six months. Considering on these grounds, we find no merit in the appeal filed by the department. Therefore, the appeal stands dismissed.

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