Commissioner of C. Ex. and Cus. Vs. Purity Flexpack Ltd.

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SooperKanoon Citation : sooperkanoon.com/750298

Court : Gujarat

Decided On : Nov-23-2006

Reported in : 2008(223)ELT361(Guj); 2008[9]STR126

Judge : Y.R. Meena, Acting C.J. and; A.S. Dave, J.

Appeal No. : Tax Appeal No. 92 of 2006

Appellant : Commissioner of C. Ex. and Cus.

Respondent : Purity Flexpack Ltd.

Advocate for Def. : None

Advocate for Pet/Ap. : Jitendra Malkan, Adv.

Disposition : Appeal dismissed

Judgement :
ORDER

1. The following question has been proposed for the admission of this appeal:

Whether or not respondent is entitled for CENVAT credit at the higher rate paid on inputs, for which manufacturer of inputs on his own paid duty at the rate of 24% instead of 16%.?

2. While considering the issue as to what extent CENVAT credit can be availed in the accepted facts, the Tribunal has considered as under:

The respondents have made a prayer for decision on merits. Accordingly, I have heard the Ld. DR and have gone through the impugned order. The respondents took modvat credit of duty paid by the supplier on inputs and as reflected in the invoices. The revenue's contention is that the supplier should have paid 16% of duty as against 24% paid by them, in which case the respondents would have been entitled only to 16% rate of duty. However, no dispute has been initiated by the revenue at the supplier manufacturer of inputs end. It is a settled law that the duty paid by the manufacturer is eligible to be availed as Modvat credit at receiver's end. The Central Excise authorities having jurisdiction over the manufacturer cannot dispute the duty liability of the inputs supplier and cannot restrict the credit on the ground that inputs manufacturer should have paid lesser amount of duty. The Commissioner (Appeals) has relied upon the earlier decision of the Tribunal in the case of Siddarth Petro Products v. Commissioner of Central Excise reported in . I do not find any infirmity in the view taken by the Commissioner (Appeals). Accordingly, I reject the appeals filed by the revenue.

3. When the duty was paid by the supplier at the rate of 24% andadded in the cost, which has been paid by the assessee, we see no infirmity in the order of the Tribunal allowing that part of duty for the purpose of CENVAT credit.

4. The appeal stands dismissed.