

Krishna Insulation Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-21-1994

Reported in : (1996)(84)ELT220TriDel

Appellant : Krishna Insulation

Respondent : Collector of Central Excise

Judgement :

1. When the Stay application was called, the learned Advocate for the appellant was not present. For reasons, which will become apparent, we have, after hearing the learned SDR, decided to grant the waiver of pre-deposit of duty and with the consent of the SDR, dispose of the appeal.

2. The appellant had taken Modvat credit on additional duty of customs paid on a consignment of electrolytic copper wires bars imported at Bombay. The Assistant Collector of Central Excise, after adjudication proceedings held that the appellant was not entitled to credit because the import was by M/s. Bombay Metal Industries and not by the appellant, and the appellant did not buy the consignment on high sea sales basis. This order was confirmed by the Collector of Central Excise (Appeals).

4. It is seen that entire consignment was sold by the importer to the appellant. The importer has also certified on the bill of entry that he has not taken any credit of duty in respect the goods covered by the bill of entry. By various decisions of this Tribunal [1989 (42) E.L.T.417, 1990 (48) E.L.T. 299 (Tribunal) = 1990 (30) E.C.R.

217 and 1990 (47) E.L.T. 292 (Tribunal) = 1990 (31) E.C.R. 111], it has been held that where the inputs have been actually received and utilised by the assessee credit cannot be refused on the ground that some procedures were not followed. It is not in question that the appellant received the goods, or is otherwise not entitled to modvat credit on duty paid on them. The goods having reached the appellant's company accompanied by a bill of entry, the requirement of Rule 57G of the Central [Excise] Rules is therefore satisfied. In the circumstances, we are of the view that credit should not be denied merely because the appellant has not satisfied a procedural condition imposed by the Central Board of Excise and Customs. The appeal is accordingly allowed.

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