India Electricals and Vs. Collector of Central Excise

India Electricals and Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/8167

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-20-1995

Reported in : (1995)(78)ELT72Tri(Mum.)bai

Appellant : India Electricals and

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the Order-in-Appeal No. GSM-1328/89-AHD, dated 4-6-1989 rejecting the appellant's appeal.

2. The undisputed facts involved in the appeal are that the appellant was availing the proforma credit procedure prior to the introduction of Modvat Scheme. During the period, when he was availing proforma credit procedure, there was a dispute about the eligibility of proforma credit in respect of certain inputs, which was finally resolved in favour of the appellant by the Asst. Collector by allowing proforma credit to the extent of Rs. 16424.60. The order allowing proforma credit came to the passed by the Asstt. Collector on 29-7-1986. By that time, the appellants had switched over to Modvat credit and hence they could not avail of credit of this amount in the proforma account in RG 23. Hence they requested for permission to transfer this amount in Modvat account in RG 23A Ft. II which was refused by the Asstt. Collector. The appeal against the order of the Asstt. Collector was also rejected. Hence, the present appeal before the Tribunal.

3. The appellant has requested for deciding the appeal on merits without their presence.

4. After hearing Mrs. Bharati Chavan, ld. JDR and perusing the appeal memorandum, I find that there is no dispute that the appellants were availing the Proforma Credit procedure prior to the switching over to the Modvat scheme. There was a dispute in regard to the extent of eligibility of Modvat credit in respect of certain inputs and this dispute was finally resolved in favour of the appellant by the Asstt.

Collector's order dated 29-7-1986. Hence, the benefit of the order has to be given effect to either by way of credit in the proforma account or by way of credit in PLA. In this case, the authorities have held that no credit was lying in balance immediately preceding the date of declaration. Such an objection is not sustainable because of the fact that the credit would have been available in balance, had the Deptt.

not objected to the availment of the aforesaid amount in the RG 23 account. Since there was a dispute, which came to be finally resolved only on 29-7-1986, the credit in respect of the inputs brought under proforma credit procedure prior to the switching over to the Modvat scheme has to be construed to be lying in balance immediately before the filling of the declaration. Hence, the provisions of Rule 57H(3) could be available to them. In this view of the matter, I allow the appeal with consequential relief.