Super Sun Lamination and Plastics Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-02-1996

Reported in : (1996)(84)ELT55TriDel

Appellant : Super Sun Lamination and Plastics

Respondent : Collector of C. Ex.

Advocate for Pet/Ap. : Shri. B.B. Gujral

Judgement :

1. The appeal is against a decision taken by the Collector of Central Excise (Appeals), Allahabad, holding that Modvat credit is not admissible on the strength of triplicate copy of bill of entry which the appellants had produced before the departmental authorities for availment of Modvat credit of countervailing duty paid on imported goods.

2. Shri B.B. Gujral, learned counsel for the appellants took me through the impugned order-in-appeal where the Collector (Appeals) had observed that the provisions of Rule 57G(4) are crystal clear and it had been provided in most unambiguous words that the manufacturer will submit the original documents evidencing payment of duty. He had gone on to observe that no exception had at all been made in this regard by law that even duplicate or triplicate or certified copies can be used as a substitute for the original duty paying documents. He has also recorded an observation that it had been admitted by the appellants that they are not in a position to present the original bill of entry as provided under the

provisions of Rule 57G(4). He has concluded that their contention that they have the triplicate copy of the bill of entry in their possession would be of no help to them because it cannot be accepted as original duty paying document. He had accordingly dismissed the appeal and confirmed the order passed by the Deputy Collector of Central Excise, Kanpur demanding duty of Rs. 51,942/-. The learned counsel then referred to the submissions contained in their appeal and pointed out that as far as the appellants are concerned it is the triplicate copy of bill of entry which constitutes the original duty paying document. The original and duplicate copies of bills of entry are received and retained in the Custom House and these are never handed over to the importers. The finding reached by the Collector (Appeals) does not take note of the procedure followed in the Custom Houses with regard to the documentation procedure. Shri Gujral also referred to the detailed stay order passed by this Bench where the factual position in this regard had been fully taken care of. He pleaded that the appeal may be allowed.

3. Shri D.S. Mullick, learned DR fairly concedes that the position canvassed by the learned counsel represents the actual state of affairs in the Custom House as far as the supply of only the triplicate copy of the bill of entry to the importer is concerned.

4. Suffice it to say that the appeal succeeds completely. The stand taken in the impugned order-in-appeal is based upon a complete non-appreciation of the procedure followed in a Custom House in the matter of processing and storing of Bills of Entry. To ask for the original bill of entry from the importer or the other person claiming Modvat Credit would be asking for something impossible of fulfilment.

It is only to be hoped that this is a stray case by the learned appellate authority of asking for an impossibility. It is just as well that Rule 57G(2) proviso has been amended to specifically refer to triplicate copy of Bill of Entry vide Notification No. 6/95 (N.T.), dated 10-3-1995.