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Commissioner of Central Excise, Belapur Vs. M/S. Eii Ess Engineering Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-22-2010

Judge : The Honourable Mr. Ashok Jindal, Member (Judicial)

Appeal No. : Appeal No. E/885 of 2008 - Mum

Appellant : Commissioner of Central Excise, Belapur

Respondent : M/S. Eii Ess Engineering Pvt. Ltd.

Advocate for Pet/Ap. : Shri S.M. Vaidya, JDR for Appellants. Shri Sanjay Dwivedi, Advocate for Respondents.

Judgement :

Per : Ashok Jindal

The Revenue has filed this appeal against the impugned order on the ground that the Commissioner (Appeals) has no power to remand the matter to the original adjudicating authority.

2. Operative part of the order of the Commissioner (Appeals) reads as under:-

Now coming to the inputs declared as obsolete in the Balance Sheets for the year 2003-04 and 2004-05, CBEC vide Circular No. 645/36/2003-CX dated 16.7.2002

has given directions on admissibility of credit taken on written off inputs, including partial write off. As there is nothing forthcoming on records as whether the inputs are fully written off or partially written off and still capable of any available for use in the manufacture of goods as envisaged in the Board's Circular mentioned above, the case is remanded for re-consideration of the admissibility of CENVAT credit on inputs which are declared as obsolete including goods mentioned Sr. Nos. 1 and 2 of the rejected goods.

In view of the above, the appeal is allowed by way of remand.-

3. From the above, I find that the Commissioner (Appeals) has remanded the matter back to the adjudicating authority for fresh adjudication. Provisions of law clearly disclose that pursuant to amendment brought out in the year 2001, the power of remand which was earlier available to the Commissioner (Appeals) has been specifically deleted from the statute book.

4. Following the ratio of the Judgement of the Apex Court in the case of MIL India Ltd. vs. CCE, Noida - 2007 (210) ELT. 188 (S.C.) wherein it was observed that the power of remand by Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001, I set aside the impugned order and allow the appeal by way of remand. Ld. Commissioner (Appeals) shall dispose of the assessee's appeal after hearing both the sides in accordance with law as expeditious as possible.

5. Appeal is allowed by way of remand

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