

Commissioner of Central Excise, Pune-ii Vs. M/S. thermal Instruments India Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-11-2010

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

Appeal No. : APPEAL NO. E/558 of 2009

Appellant : Commissioner of Central Excise, Pune-ii

Respondent : M/S. thermal Instruments India Pvt. Ltd.

Advocate for Pet/Ap. : Shri B.P. Pareira, JDR. Shri R.M.Patkar, Consultant.

Judgement :

Per : Ashok Jindal, Member (Judicial)

The Revenue has filed this appeal against the dropping of demand and penalty against the respondent.

2. The brief facts of the case are that respondent had taken credit of Rs.45,000/- in their PLA Account mentioning credit taken in view of the Order-in-Appeal No. P-II/BKS/250/06 dated 12.9.2006. The contention of the department is that the said Order-in-Appeal is not authorizing the appellant to take suo moto credit in account current since as per para 3 of Part V of Chapter 3 of CBEC Manual of Supplementary Instructions, 2005, the assessee may take credit in account

current by making cash payment in Form TR6/GAR7 under the current head of account into the Treasury or authorized bank account. It is alleged that the respondent had not deposited any amount into the Treasury and it was further alleged that the respondents subsequently utilized the said credit. Accordingly, the Revenue contended that the respondent can take the credit of the same by filing the refund claim only and not by suo moto taking the credit in their account current.

3. Heard.

4. In have gone through the impugned order wherein the Commissioner (Appeals) has clearly found from the facts that the appellant is not only eligible to avail Cenvat credit of Rs.1,79,028/- but also eligible to take credit of Rs.45,000/- which was made as pre-deposit under TR6 Challan No.4/2006 dated 4.8.2006 . He further pointed out that the show cause notice alleges that the assessee can take credit only when the amount is deposited in the account current by making cash payment in form of TR6/GAR7 and in the instant case, the appellant has made pre-deposit under TR6 Challan only. This fact has not been controverted by the Revenue. Hence, I do not find any merit in the appeal. The same is dismissed, impugned order is upheld.

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