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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-22-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Central Excise Appeal No.680 of 2008-SM

Appellant : M/S Wings Electronics Ltd.

Respondent : C.C.E., Meerut li

Advocate for Pet/Ap. : Shri Ravi Raghvan, Advocate for the appellants. Shri I. Baig, Authorised Departmental Representative (SDR) for the Revenue.

Judgement :

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 143/CE/APPL/NOIDA/07 dated 18/27.12.2007.

2. Heard both sides.

3. The dispute relates to denial of credit in respect of 2 bills of entry No.00558 and 010956 involving total credit of Rs.2,33,573/-. The credit was sought to be denied on the ground that the appellants have not produced the said bills of entry for defacement by the jurisdictional Central Excise Superintendent. Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate for the appellants submits that several documents including bills of entry for 1995-96 and 1996-97 were summoned to be produced by DRI officers on 17.12.96. Accordingly, the 3 files containing bills of entry with serial numbers 1 to 72 were produced to the officials of the DRI ON 17.12.96. Subsequently, when the jurisdictional Central Excise authorities were seeking copies of the bills of the entry for defacement, they exchanged correspondence with the jurisdictional Central Excise authorities and the DRI seeking copies of such documents. The DRI officials gave the copies of the documents periodically. For example, by letter dated 8.11.05, they gave copies of 7 bills of entry. By letter dated 11.8.04 they requested for copies of three bills of entry, but DRI vide letter dated 31.8.04 produced copy of one bill of entry. He submits that the two bills of entry were surrendered to DRI and as the DRI has not given the copies of said documents, they were not able to produce the copies for defacement.

5. Learned SDR submits that the appellants are required, during the relevant time, to produce original duty paying documents and extracts of Part I and II Form RG-23A within 5 days after close of each month. As the disputed amount relates to Nov. 1996, the appellants should have produced the documents before 5.12.96 to the Department. Since they have failed to produce the same and since there is no specific evidence that the disputed bills of entry were taken over by the DRI, the denial of credit should be upheld. He also relies on the decision of the Tribunal in the case of Paramount Communication Limited v. C.C.E., New Delhi reported in 2004 (176) ELT 366.

6. I have carefully considered the submissions from both sides. On perusal of the show cause notice dated 29.4.97, it is noticed that the show cause notice was issued for denying the credit of Rs.21,99,936.90 alleging that the copies of the duty paying documents have not been produced for defacement in 26 cases. The appellants have tried to get copies from DRI and produced the same as and when received from DRI and the demand has, accordingly, been reduced substantially. In other words, except in respect of credits based on 2 bills of entry, other credits have been allowed and the matter regularised. Viewed in this background, the claim of the appellant that the DRI has collected bills of entry including 2 disputed bills of entry, and that they could not produce the copies to the authorities for

defacement due to non-receipt of copies from DRI deserves to be accepted. It is seen from the records that while DRI has seized/recovered certain documents, they released copies of bills of entry on more than one occasion. From the available record, it is seen that they have released such documents on 31.8.04 and 8.11.05. Under these circumstances, the claim of the appellants that the documents were in the custody of the DRI and perhaps they have misplaced and therefore, they have not been able to get them and produce the same to the authorities for defacement deserves to be accepted.

7. In view of the above, the order of the Commissioner (Appeals) is set aside and the appeal is allowed with consequential relief, as per law.

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