Powder Build Ltd. Vs. Commissioner of C. Ex. and Cus.

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SooperKanoon Citation : sooperkanoon.com/9877

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-09-1996

Reported in : (1997)(93)ELT487Tri(Mum.)bai

Appellant : Powder Build Ltd.

Respondent : Commissioner of C. Ex. and Cus.

Judgement :
1. Today the matter was listed only for admission. The appellants have vide their letter dated in August 1996 requested for decision on merits in their absence. The appeal is being [x] finally disposed of at this stage only.

2. The Appeal is directed against the Order-in-Appeal No. Cs-74/BRD/96, dated 9-4-1996, and it covers up to issues namely, denial of Modvat credit of Rs. 1,759/- availed of, on the strength of the certificate issued on 8-4-1994 by the Range Supdt. The rejection of the said Modvat credit is on the ground that vide Notification No. 16/94 (N.T.) C.EX., dated. 30-3-1994, the Certificate was de-recognized as the available document with effect from 1-4-1994, and the certificate so produced was therefore not the proper document. The second demand of Rs. 7,491/- is on the ground that Modvat credit was taken on the original copy of Invoice and the request was made for permitting them to avail of the Modvat credit on the ground that duplicate was lost. The authorities below, however, felt that because the discretionary powers invested in the Assistant Collector were only conferred vide Notification No.23/94, dated 20-5-1995 and because the incident was for the period prior thereto, it was not open for the said authority to exercise

the discretion.

3. Considering the submissions made, so far as the demand for Rs. 1,759/- is concerned, the Modvat credit is availed on the basis of the certificate issued by the Range Supdt. on 8-4-1994 when the same was de-recognized vide Notification No. 16/94 with effect from 1-4-1984.

The Modvat credit has therefore been rightly rejected and no interference is called for.

4. So far as demand of Rs. 7,491/- is concerned, the rejection of the same only on the ground that the discretionary powers were invested in the officer only at a subsequent stage, does not appear to be justified. The investiture of the powers is an administrative act and have to be exercised in adjudicating the case which comes before him, irrespective of whether the cause of action for the same has arisen at an earlier date. The bar of retrospective operation is applicable only when there is a statutory alteration in substantive law. This is not the case here. Under these circumstances, so far as the said demand is concerned, the order is set aside. The matter is remanded back to the adjudicating authority to examine the said aspect keeping in view the fact that the discretion is available to him for allowing or otherwise, of the Modvat credit on the document other than the specified documents, when the required document is reported to be missing.