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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-06-1996

Appellant : Raymond Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Today the matter was listed for admission. However, considering the issue involved, admitting the appeal the same is taken up for final disposal.

(i) the credit was taken on the basis of the original invoices when the prescribed documents was only the duplicate copy of the invoice and (ii) that the inputs used for manufacture of packing material which were exempted from duty was not entitled to Modvat credit in relation to final product.

4. So far as the packing material aspect is concerned, the issue has squarely stood decided by the Madras High Court in Ponds (India) Ltd. v. Collector -1993 (63) E.L.T. 3 (Mad.). This has also been followed by this Bench in Ashwin Vanaspati v. Collector. Even in the earlier decision of the Tribunal in FDC Ltd. v. Collector -1991 (55) E.L.T. 601 (Tribunal) it has been held that denial of Modvat credit on inputs used in manufacture of packing material which are used for packing of the final product, which are excisable, cannot be denied. In that case, the finding of the authorities below as regard to the packing material cannot be sustained and is set aside.

5. So far as the availing of Modvat credit on original invoice, the appellants seem to have informed the department about the loss or misplacement of the duplicate copy of the invoice. Though the rule at the relevant period may not have prescribed the original invoice as the proper duty paying documents, the credit could not be denied if the prescribed documents are lost or misplaced and the duty paying character is sought to be proved by production of secondary evidence.

The appellants have already declared the misplacement and therefore it was required of the department to examine the secondary evidence adduced namely, the original copy of the invoice. This does not seem to have been done. The denial of credit simply because the principal document is not produced, therefore cannot be sustained. The matter to that extent is sent back to the adjudicating authority to examine the correctness of the claim for misplacement of duplicate invoice and accord sanction to availment of Modvat credit on the original invoice which, if on due scrutiny, is found to be corelated to the goods brought and that the duplicate copy is not misused by the party. They may also take appropriate precautionary measures by way of getting a bond executed from the party, against the misuse of the duplicate invoice.