(2008) 04 SC CK 0088

In the Supreme Court Of India

Case No : Civil Appeal No''s. 6537-6538 of 2002

Commissioner of Customs APPELLANT

Vs

Auto Ignition Ltd. RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Citation : (2008) 129 ECC 122 : (2008) 155 ECR 122

Hon'ble Judges : Dalveer Bhandari, J;Ashok Bhan, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Binu Tamta, for P. Parmeswaran, for the Appellant; Alok Yadav and Ajay Majithia for Kailash Chand, for the Respondent

Final Decision : Dismissed

Judgement

Revenue has filed these appeals.

1. The Assessee imported silicon steel sheets and ball bearings under the Advance Licence Scheme vide Bills of Entry dated, 08th March, 1994 and 18th February, 1994 and availed duty free clearances of imported goods under Notification No. 203/92-CUS dated, 19th May 1992 which has been amended from time to time with which we are not concerned in the present case. The Assessee exported ''starter for alternator & generator assembly & solonoid switch, dynamo, slip ring ignition coil oil filled''.

2. After the export, the Assessee was served with two show cause notices dated, 16th March 1998 demanding various amounts of Customs Duty shown in the annexures to the respective show cause notices aggregating to Rs. 20,42,257.90. According to the Revenue, the Assessee had availed of the MODVAT credit on the material which it could not avail under the said notification. The Assessee, in its reply to the show cause notice, took the stand that it had not availed of the MODVAT credit on the imported inputs and that it had availed of the MODVAT credit only on the inputs/raw material purchased indigenously.

3. The authority-in-original, viz., Commissioner of Customs, held, that the Assessee had availed of the MODVAT credit and accordingly confirmed the duty demanded in the show cause notices. The Assessee challenged the Order of the Adjudicating Authority before the Customs, Excise and Gold (Control) Appellate Tribunal (for short, ''the Tribunal''). It was submitted by the Assessee before the Tribunal that it had not availed of MODVAT credit regarding imported inputs and that it had availed of the same for the input/raw material purchased from the local market. Learned members of the Tribunal afforded an opportunity to the departmental representative to verify this aspect. Departmental representative, on the adjourned date of hearing, stated before the Tribunal that he had not received any answer from the Commissioner concerned, despite correspondence addressed to him and personal efforts made by him. On the making of this statement, the Tribunal came to the conclusion that the Assessee had not availed of the MODVAT credit on imported inputs/raw material and in the absence of any material to show that the Assessee had availed of MODVAT credit on the inputs purchased from the local market, the demand raised by the Revenue was unjustified. The Tribunal, therefore, accepted the appeal and set aside the Order of the Adjudicating Authority.

Learned Counsel for the parties have been heard.

4. The stand taken by the Assessee is the same which had been taken before the Assessing Authority as well as before the Tribunal. Learned Senior Counsel for the Revenue is not in a position to controvert the plea raised by the learned Counsel for the Assessee. Although even before the Tribunal the Department was not able to verify the aspect as to whether the Assessee had claimed MODVAT credit, the Department has chosen to file appeal before this Court.

5. We agree with the view taken by the Tribunal that in the absence of any such proof, demand raised by issuing the show cause notices cannot be sustained. Moreover, the onus to prove that the Assessee had availed of the MODVAT credit was on the Revenue. Accordingly, we do not find any error in the impugned Order of the Tribunal and consequently do not find any merit in these appeals. The appeals are, therefore, dismissed leaving the parties to bear their own costs.

