

Customs, Excise and Gold Tribunal - Delhi

Commissioner Of Central Excise vs Spun Tubes Ltd. on 10 November, 1997

Equivalent citations: 1998 (103) ELT 52 Tri Del

ORDER K. Sankararaman, Member (T)

1. The appeal is filed by the Commissioner of Central Excise, Meerut against the Order-in-Appeal passed by the Commissioner of Central Excise, Ghaziabad holding the present respondents to be eligible for Modvat credit on the strength of invoices issued by the dealers from whom they had purchased their input material, namely, H.R. coils. The Assistant Collector had held against them and disallowed Modvat credit and confirmed duty demand as a consequence amounting to Rs. 2,88,703.00 on the ground that they had taken such credit on the strength of invoices issued by certain dealers, who had not been appointed as authorised dealers or distributors of Steel Authority of India who are the manufacturers of the subject goods. This order was reversed by the Collector (Appeals), who found the case to be in conformity with the requirements of Notification 15/94-C.E. (N.T.), dated 30-3-1994 read with Section 2(k) of CESA, 1944 regarding the identity of wholesale dealer. In the present appeal, the order-in-appeal has been assailed on the ground that the phrase "wholesale distributors"/dealers of a manufacturer would refer only to a wholesale dealer who is specifically appointed by the manufacturers as such and any person /trader purchasing the goods from a manufacturer in wholesale will not be a wholesale distributor /dealer of a manufacturer within the meaning of Notification 15/94.

2. The contentions raised in the appeal were reiterated by the Id. DR, Shri Tilak which were opposed by the Id. Consultant for the respondents, Shri R.S. Pandey. He relied upon the decision of the Tribunal in the case of C.C.E., Meerut v. Uttam Ind. Engg. P. Ltd. reported in 1997 (89) E.L.T. 87 (Tribunal). In addition, he also pointed out that the dispute relates to the period May and June, 1994. The requirement of issue of invoices by registered dealers in the manner covered under Rule 57G came to be prescribed only in July, 1994 and hence not applicable to the present transactions. He pleaded that the department's appeal be dismissed.

3. I have considered the submissions by both sides. I have perused the record as also the Tribunal's decision cited above. I find that the present case is on all fours with the one decided by the Bench in the Uttam Ind. Engg. Pvt. Ltd. case (supra). The objection taken in the appeal against Order-in-Appeal that the dealer who purchased the goods and sold them to the manufacturer availing Modvat, has to be a registered dealer or that he should be appointed by the manufacturer, would not apply to the facts of the present case. Respectfully following the Tribunal decision in the case of Uttam Ind. Engg. (P) Ltd. (supra), I uphold the Order-in-Appeal and dismiss the appeal.