

Adarsh Packers (P) Ltd. vs Collector Of Central Excise on 22 March, 1994

Equivalent citations: 1994(71)ELT837(TRI-DEL)

ORDER

S.K. Bhatnagar, Vice President

1. This is a Stay Application filed with reference to the Order-in-Appeal of Collector of Central Excise (Appeals) dated 30-11-1993.
2. The Learned Counsel stated that in this case, the entire consignment was sold by the importer to the appellant on High Sea Sale basis and endorsements to this effect was made on all copies of Bills of Entry. The entire consignment was brought from the Customs House directly to their factory in original packed condition and the modvat credit was taken accordingly.
3. The modvat is however sought to be denied on the ground that this was not permissible.
4. It was their submission that this is a well recognised practice and was permissible under the rules. And in this connection, they would draw attention to the Bombay Collectorate Trade Notice No. 57/1987 dated 7-8-1987.
5. Learned Departmental Representative stated that in view of a series of orders of this Tribunal on this point he does not oppose the request for waiver of pre-deposit and has no objection if Appeal itself is heard and disposed of.
6. Learned Counsel also states that as this is the only point involved he has also no objection if the appeal itself is heard and disposed of.
7. We observe that the assessed Bill of Entry is a document which constitutes proof of payment of duty in respect of the goods mentioned therein; and it is well settled that modvat credit can be availed of on the basis of such documents, particularly in the case of sale on High Sea Sales basis provided that the Bills of Entry are duly endorsed in favour of the purchaser; (and the required certificate /declaration are noted thereon). We therefore, waive the pre-deposit of the amount in question.
8. Further we take the main appeal itself with the consent of both the sides.
9. Since it is already well settled, by a catena of orders of this Tribunal, that modvat can be availed of in the circumstances, noted above, we set aside the impugned orders and accept the appeal.