

GIB/MB/Brown Kraft/7.11.2006/HC-133

High Court Category : Others

State : Mumbai

Order No.: GIB/MB/Brown Kraft/7.11.2006/HC-133

Name of Entry :
Brown Kraft Inds

Date : 07-11-2006

Breif Issue :

Facts & Issue Of The Case :

It was held that discounts are commercial aspects of business, if the discounts are not a reason for short payment or for refund of excise duty payable by the manufacturer / supplier, such discounts cannot be a ground to reduce CENVAT credit which is allowed based on excise duty paid invoices. So long there is no loss to the revenue as far as the payment of duty is concerned by the assessee i.e. supplier of the goods on the proper correct assessable value. The Tribunal held on the following lines:

1. If there is a short payment of duty or refund claimed by the assessee supplier or reduction of sale price of the goods, there is some meaning in the action of the department to demand the appellants to reduce or reverse the credit equal to short payment of duty or refund claim.
2. There is no such exercise by the authorities concerned at the suppliers end.
3. Duty is paid on the basis of regular practice which is as per trade practice or on mutual agreement.
4. the trade discounts/cash discounts and other discount are the normal practice, which cannot be quashed by the department as long as they receive the correct quantum of duty, on correct assessable value.
5. Therefore, the department cannot direct the appellant to reverse the credit or to disallow the credit as the Appellants had paid the duty and taken credit which is equivalent to duty shown in the invoice issued by the supplier.
6. Therefore, the confirmation of the demand for excess credit is not sustainable and penalty imposed thereof along with interest is not sustainable.
7. Both the authorities had erred in demanding reversal of credit.
8. Therefore, both the impugned orders were set aside and the appeal was allowed with consequential relief, if any.