

**Collector of Central Excise Vs. Bharat Wire Products**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-10-1997

**Reported in :** (1998)(99)ELT297TriDel

**Appellant :** Collector of Central Excise

**Respondent :** Bharat Wire Products

**Judgement :**

1. The Collector has filed the captioned two appeals on the ground that the Collector (Appeals) has not correctly interpreted the provisions of Rule 57-I to hold that the date of taking Modvat credit is the material date for counting the period of six months for issue of show cause notice.

2. The facts of the case are that the respondents are engaged in the manufacture of copper wire and aluminium wire etc. They were availing the benefit of Mod vat credit under Rule 57A after filing declaration under Rule 57G. The respondents received a consignment of electrolytic copper wire from the importer. The bill of entry was in the name of M/s. Metal Linkers and the importer endorsed this bill of entry in the name of the respondents. The department alleged that the Modvat credit cannot be taken on the strength of the endorsed bill of entry. The lower authorities have decided the two issues one was about admissibility of Modvat credit on the strength of endorsed bill of entry and the second was whether the demand was hit by limitation in as much the Modvat credit on the endorsed bill of entry was taken on 25-1-1992 whereas a show cause notice was issued in one case on 28-7-1992 and in the other case 31-7-1992. In the appeals before me I

find that the department has contested only on the issue of limitation and has not contested the issue of taking Modvat credit on the strength of endorsed bill of entry. However the Collector (Appeals) had also held that the Modvat credit on the endorsed bill of entry cannot be taken and against this the respondents have filed Cross Objections.

3. Shri V.R. Sethi, learned JDR appearing for the appellant Commissioner submits that on limitation aspect the words used in Rule 57-1(1) say within six months from the date of such credit and not of taking of such credit therefore reasonable interpretation would be that the notice should be raised within six months from the date of taking of such credit and where the credit has been utilised within six months of such utilisation. It was also argued by him that the department would not be aware of the date of utilisation of such credit therefore reasonable interpretation would be to count six months period for issuing show cause notice from the date of RT 12 returns are filed in the case. He submits that if this interpretation is accepted both show cause notices are within time inasmuch [as] RT 12 returns for the month of January, 1992 would have been submitted by 5-2-1992.

4. On the question of Cross Objections filed by the respondents, learned JDR reiterates the findings of the lower authorities.

5. Shri Naveen Mullick, learned Advocate appearing for the respondents submits that it is the date of taking Modvat credit which is the material date during the relevant period for counting' the period of six months for the purpose of limitation. He submits that Rule 57-1 of the Central Excise Rules, 1944 stipulates that it is the date of taking credit and not the date of utilising the credit which is the material date for the purpose of counting the period of six months or 5 years as the case may be. He submits that in the instant case there is no mis-statement, suppression etc. as alleged nor can it be alleged therefore the demand can be raised only within a period of six months.

The learned Counsel submits that the Modvat was taken on 25-1-1992 and show cause notices have been issued first on 28-7-1992 and the second on 31-7-1992 and therefore both show cause notices are beyond the period of six months. He

submits that the demand is time barred and therefore prays that the two appeals may be rejected.

6. On the question of acceptance of endorsed bill of entry for taking Modvat credit, learned Counsel submits that there are a number of judgments of this Tribunal on the issue. In support of his contention he cites and relies upon the judgment of this Tribunal in the case of Sardar Aluminium Factory [1996 (13) RLT 907] and in the case of Filament India Limited [1996 (84) E.L.T. 214]. The learned Counsel therefore prays that their Cross Objections may be accepted and it may be held even on merits that Modvat credit can be taken on the strength of endorsed bill of entry.

7. Heard the submissions of both sides. On the first question namely counting the period of six months the rival contentions were heard and considered Rule 57-I was also perused. For the sake of clarity the Rule 57-I is reproduced as under: "57-I. Recovery of credit wrongly availed of or utilised in an irregular manner. - (1)(i) Where credit of duty paid on inputs has been taken on account of an error, omission or misconstruction, on the part of an officer or a manufacturer, or an assessee, the proper officer may, within six months from the date of such credit, serve notice on the manufacture or the assessee who has taken such credit requiring him to show cause why he should not be disallowed to such credit and where the credit has already been utilised, why the amount equivalent to such credit should not be received from him: Provided that where such credit has been taken on account of wilful mis-statement, collusion or suppression of facts on the part of a manufacturer or an assessee, the provisions of this clause shall have effect as if for the words "six months" the words "five years" were substituted.

Explanation - Where the service of the notice is stayed by an order of the Court, the period of such stay shall be excluded from computing the aforesaid period of six months or five years, as the case may be.

(ii) The proper officer, after considering the representation, if any made by the manufacturer or the assessee on whom notice is served under Clause (i), shall determine the amount of such credit to be disallowed (not being in excess of the amount specified in the show cause notice) and thereupon such manufacturer or

assessee shall pay the amount equivalent to the credit disallowed, if the credit has been utilised, or shall not utilise the credit thus disallowed.

(2) If any inputs in respect of which credit has been taken are not fully accounted for as having been disposed of in the manner specified in this section, the manufacturer shall upon a written demand being made by the Assistant Collector of Central Excise pay the duty leviable on such inputs within 10 days of the notice of demand." 8. It would be seen that it is the date of taking of credit which is material for counting the period of limitation as the words "such credit" used in this rule refer to the credit of duty taken and not the utilisation of credit of duty. The words of the rule are very clear, no extraneous assistance is required to interpret these words because such credit used in the Rule by natural construction refers to only credit of duty taken, credit taken is distinct from utilisation of this credit. I, therefore hold that for the purpose of counting the period of six months it is the date of taking credit and not the date of utilisation of the credit which is relevant or filing RT 12 returns which is relevant. In this view of the matter the appeals are rejected.

9. On the Cross Objections filed by the respondents I find that the law is well settled now. The Tribunal has been consistently holding that endorsement of the bill of entry do not change its duty paying character and that the Modvat credit of duty can be taken on the strength of endorsed bill of entry. In view of the case law cited and relied upon by the respondents on the issue I do not see any reason to disagree with the view already taken so far. In this view of the matter I accept the plea of the respondents submitted in the Cross Objections pleading that the Modvat credit can be taken on the strength of endorsed bill of entry. Cross Objections are also disposed of in the above terms.

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