

**Meghdev Enterprises Vs. Commissioner of Central Excise**

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

**Decided On :** May-15-1998

**Reported in :** (1999)(112)ELT477Tri(Mum.)bai

**Appellant :** Meghdev Enterprises

**Respondent :** Commissioner of Central Excise

**Advocate for Pet/Ap. :** Shri. Trivedi

**Judgement :**

1. These are appeals against the two different orders passed by the Commissioner (Appeals), Mumbai, whereunder, he denied credit of transfer of amount paid under proforma credit to be transferred to PLA in terms of Rule 57H(3).
2. The appellants manufacture paper based laminated sheets. They were purchasing kraft paper from M/s. Ballarpur Industries and M/s. Sirpur Paper Mills Ltd. They purchased kraft paper from M/s. Ballarpur Industries for the period from September, 81 to June, 82 and from Sirpur Paper Mills for the period from 1-7-1975 to 30-6-1986. The above period has been mentioned to highlight the dispute between the department and the appellants in respect of the transfer of proforma credit to Modvat credit. The purchases made by the appellants from the above suppliers the duty was varied due to addition of post manufacturing expenses. When the post manufacturing expenses were added, they paid extra amount to the supplier and they claimed proforma credit under Rule 56A(2). This was done in 1988. When the appellants sought to transfer this credit for modvat purposes, it

was objected to by the Jurisdictional Asstt. Commissioner. They filed appeals before the Commissioner (Appeals), Mumbai who confirmed the order. Hence these appeals.

3. The Id. Counsel Shri Trivedi appearing for the appellants stated that even though his clients have purchased kraft paper for the period 1-7-1975 to 30-6-1986 from M/s. Sirpur Paper Mills Ltd. He fairly stated that for the period from 21-5-1983 to 28-2-1986, the appellants are not entitled to the transfer of proforma credit to the Modvat credit account as the product was considered to come under Tariff Item 68. He also invited our attention to the decision of the Tribunal in the case of Hematic Motors Pvt. Ltd. v. C.C.E. -1991 (52) E.L.T. 532 (Tribunal) and M/s. Moti Laminates (P) Ltd. v. C.C.E., Ahmedabad Order Nos. 50-51/94-WRB, dated 29-12-1994. In the Hematic Motors Pvt. Ltd. case (supra) it has been held by the Tribunal in para 8 as follows : "From the above, it is clear that wherever, the duty initially paid on the inputs which credit has already been allowed is varied subsequently due to any reason resulting payment of refund or recovery of more duty from the manufacturer/importer of inputs, the credit initially allowed shall be varied - (a) by adjustment in the credit account maintained under Sub-rule (3) i.e. RG 23A; or (b) in the account-current maintained under Sub-rule (1) of Rule 9 or Rule 173G(1) i.e. PLA or (c) if such adjustment is not possible for any reason by cash recovery from or, as the case may be, refund to the manufacturer availing of the procedure.

At the time when the differential duty was paid consequent upon the demand, the appellants have admittedly closed their proforma account maintained under sub-rule of Rule 56A, by transferring whatever balance lying to the Modvat credit and they also started availing of Modvat credit by filing the declaration under Rule 57G. Hence, the first alternative prescribed under proviso (5) to Sub-rule (2) of Rule 56A is necessarily required to be ruled out. All the same, it is not the case of the department that there was no account current being operated under Rule 173G(1) in the case of the appellants.

Hence, the appellants are entitled to get the credit in the PLA maintained under Rule 173G(1). Thus, even if it is held that credit cannot be taken in proforma

account in respect of the differential duty paid subsequently, such a credit is required to be given in the PLA account. The question of granting cash refund is also provided in the said proviso and it will arise only where such adjustment is not possible either in RG 23 account or in PLA. In view of this specific provision available in Rule 56A itself, we hold that if credit for differential duty paid subsequently cannot be given in the proforma account because of its closure, it would still be available by way of credit in PLA. Hence, the whole exercise of taking initial credit in RG 23 (proforma) account and that thereafter its closure and thereafter transfer to Modvat account in terms of Rule 57H, is redundant and is not called for." Following the said decision, the Tribunal in the subsequent case of Moti Laminates (P) Ltd. had also allowed the appeal of the appellants.

Hence, following the said precedent decisions, we allow the appeals of the appellants. However, we add and declare that for the period from 1-6-1983 to 28-2-1986 since the appellant was given refund, they are not entitled to the transfer of proforma credit to Modvat credit account. For the qualification purpose, we remand the matter to the jurisdictional Asstt. Commissioner. Appeals are allowed and remanded to the jurisdictional Asstt. Commissioner.

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