

**Collr. of Central Excise Vs. the Maharashtra Agro-inds. Dev.**

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

**Decided On :** Sep-26-1998

**Reported in :** (1998)(62)ECC618

**Judge :** G Srinivasan

**Appellant :** Collr. of Central Excise

**Respondent :** The Maharashtra Agro-inds. Dev.

**Judgement :**

1. This is an appeal filed by the department against the decision of the Collector of Central Excise (Appeals), Indore made in Order-in-Appeal No. 1069/Apl/Ind/93 dated 18.11.1993. In the said order he set aside the order of the Assistant Collector who by the Order-in-Original had held that Modvat credit has been wrongly availed inasmuch as the final product was exempted under Notification 87/91 dated 11.9.1991.

2. When the appeal was taken up Shri S.V. Pande. Assistant Manager, appearing on behalf of the respondent, pleads an adjournment since the consultant is out of station. Normally I would have granted adjournment that since the matter is covered by the judgment of the Allahabad High Court. I feel that it is not necessary to keep the appeal pending.

3. In this case the respondent was engaged in the manufacture of processed and prepared foods classifiable under Chapters 20 & 22 of the Central Excise Tariff Act

which are marketed under brand name NOGA. They were availing the Modvat credit facility. By Notification 19/91 dated 25.7.1991 the product falling under Chapter Sub-heading 2001.10 was exempted from payment of duty. By another Notification 87/91 dated 11.9.1991 fruit pulp based drinks falling under Sub-heading 2202.90 were exempted from the whole of duty. A show cause notice was issued on 9.3.1992 on the ground that Modvat credit was not available under Rule 57C of the Modvat Rules and they demanded duty of Rs. 18,745.85/-. The Assistant Collector by the Order-in-Original had held that the credit was available on inputs if it is used in the manufacture of only final dutiable product. In this case final product is exempted and hence credit could not be availed of, He also relied on the decision . The assessee/respondent filed an appeal to the Collector (Appeals). Indore who by the impugned order following the decision of the Tribunal in Vipro Information Technology allowed the appeal of the assessee. Subsequent to this the Allahabad High Court had occasion to deal with the same matter in the case of Super Cassettes Industries Ltd. v. Union of India . In paragraph 11 of this judgment the Court has held as follows:-- As already stated, Rule 57C clearly states that no credit of duty paid on inputs shall be allowed if the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty. This provision clearly contemplate a situation like the one before us. There is another provision in Rule 571 where the officer can demand the reversal of the credit which has been taken on account of an error, omission or misconception. It was contended that when the credit was taken the final product was not exempted from excise duty and it is only subsequently that the final product became exempt from excise duty and therefore, Rule 57C was not attracted. This contention is not correct. The whole scheme is in respect of excisable goods and, therefore, if the product is exempted from excise duty from a particular date the Modvat credit taken in respect of inputs which are in stock has to be reversed.

Even the inputs that have been used in the manufacture of final products which have become exempt from excise duty, Modvat credit in respect of such inputs also becomes inadmissible and will have to be reversed. In my view there is no warrant for the view that Modvat credit once availed by making the necessary entries is irrecoverable. This amounts to unjust enrichment and cannot be

conceived of in the light of the rules on the subject. I am, therefore, of the view that the debit entries made by the petitioner for reversing the modvat credit availed by it were in compliance of its legal obligation and it cannot be said that by making such entries the petitioner has made any illegal payment to the Union of India. On the other hand the net result is that the Union of India has received only what it was unjustly entitled to receive i.e. the duty on the inputs. What was exempt from excise duty was only the final product and not the inputs.

4. Hence following the above judgment of the Allahabad High Court, I admit this appeal and allow the same. Appeal stands disposed of. The order impugned by the Collector (Appeals), Indore impugned by the appeal stands reversed.

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