**Commissioner of C. Ex. Vs. Shree Digvijay Cement Co. Ltd.**

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**SooperKanoon Citation** : sooperkanoon.com/14736

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

**Decided On :** Nov-26-1998

**Reported in** : (1999)(114)ELT633Tri(Mum.)bai

**Appellant** : Commissioner of C. Ex.

**Respondent** : Shree Digvijay Cement Co. Ltd.

**Judgement** :

1. Respondents manufacture cement falling under the Chapter 25 of CETA.They were having a wet process unit and a dry process unit for manufacturing cement in the same premises until July, 1988 when they took out separate Central Excise for their dry process unit and accordingly were maintaining separate accounts statutorily prescribed.

There was a declaration filed under Rule 57G for Modvat purposes by the undivided unit on 4-3-1987 in respect of their input gypsum. The new unit which came into existence from 1-5-1987 did not file any declaration for Modvat purpose.

2. The department found that the appellants had received inputs gypsum in their old unit and taken credit in that unit which was also accounted for in the RG 23A Part I and Part II account maintained by that unit. But it was found that the input received in the old unit has been utilised in the new dry process unit and the credit so taken has been utilised towards payment of duty on the final produce cleared from the dry process unit. Since this unit had taken out a separate Central Excise licence, but did not file any declaration under Rule 57G, proceedings were initiated

against them by the jurisdictional Assistant Collector on the ground that credit so utilised towards payment of duty on the final duty cleared from the dry process unit in respect of the input received in the old processing unit is not correct. The Assistant Collector adjudicated the matter and ordered that the credit amount of Rs. 2,48,048/-wrongly availed by the dry process unit be reversed/recovered under Rule 57-1 of the Central Excise Rules. Penalty of Rs. 2000/- was imposed on the Respondents.

3. On an appeal against this order the Collector (Appeals) in the impugned order has held that the utilisation of Modvat credit used in the manufacture in dry process unit without filing Modvat declaration and without maintaining the separate RG 23A Part I and II account for the new unit is not correct in law. However, the Collector (Appeals) noted the Respondents submission that they have already paid the duty involved by debiting their PLA of the dry process unit on 29-8-1989 and that once duty has been paid in the PLA they should be allowed to take credit of duty of this amount in their RG 23A Part II for their old wet process unit. The Collector (Appeals) accepted this plea and directed the Assistant Collector to allow the Respondents credit of the amount of Rs. 2,48,048/- in their RG 23A Part II account pertaining to their wet process unit. The Collector (Appeals) also set aside the penalty on the Respondents.

4. Shri K.L. Ramteke, the learned DR reiterated the grounds of appeal and contended that utilisation of the credit in the dry process unit without any declaration would render the taking of credit ab initio illegal. On a careful consideration of this submission it is seen that by the impugned order the Collector (Appeals) has noted the fact that of the wrong utilisation of Modvat credit on being pointed out the Respondents have remedied the situation by debiting the duty amount in their PLA. In this view of the matter the Collector (Appeals) has rightly directed that that much credit should be restored, in the Modvat accounts of the old wet process unit, and this finding of the Collector (Appeals) is reasonable considering that it is the admitted position of the department that the wet process unit had filed declaration in respect of the inputs in question and taken the credit in their Modvat account maintained by them regularly. The mis-utilisation thereof by the new dry process unit has been corrected, and once the duty demand has also

been paid by debiting the PLA, the restoration of that much credit in Modvat accounts of the old unit is a reasonable direction. In this view of the matter the impugned order is upheld the appeal is rejected.