

Creative Enterprises Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-24-1999

Reported in : (1999)(65)ECC193

Appellant : Creative Enterprises

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application for waiver of condition of pre-deposit of disallowed Modvat credit amounting to Rs. 25,54,344/- and penalty amounting to Rs. 30 lakhs imposed on the appellants, as also for the stay of recovery thereof.

2. We have heard Shri V.S. Nankani for the applicants and Shri G.B.Yadav, for the revenue.

3. The facts relating to the dispute are required to be narrated. The appellants received duty paid goods falling under sub-heading 3208.40 bearing the description "ELMO LUFT 1-A (insulating varnish)" in bulk.

These were packed into smaller containers. The process of manufacture was declared to the department at a time of filing declaration under Rule 173B of the Central Excise Rule 1944. A declaration was filed by them under Rule 57G wherein the inputs received from Dr. Beck & Co. (I) Ltd. and packaging materials were declared as inputs. The packed goods were cleared by the applicants on payment of duty. A Show Cause Notice was issued on 10-4-1997 alleging that in

the declarations filed under Rules 173B and 57G the applicants had not declared that the final product was made on job work for Dr. Beck & Co. It was noted that the invoice issued under Rule 52A under which the goods were removed from the applicant's [factory] were in the name of Dr. Beck & Co. and that this fact was not declared in their RT 12 returns. It was alleged that the process of re-packing from bulk to retail packing did not amount to manufacture as far as goods falling under Chapter 32 were concerned. On this count it was claimed that the Modvat credit taken by the applicants was wrong and was liable to be reversed. The Commissioner after hearing the assessee passed the impugned order.

4. In this order he held that the activity of the applicants did not amount to "manufacture". He held that the assessee had suppressed facts when filing the declarations under Rule 173B. On this count he ruled that the Modvat credit taken on inputs were wrong and ordered reversal thereof. One of the grounds urged by the Id. Counsel was that the demand was hit by limitation. The Show Cause Notice is dated 10-4-1997 and covers the period March 1996 to August, 1996. The extended period has been invoked on the ground of wilful suppression and misdeclaration.

5. We have examined the grounds. As far as we see from the text of Rule 173B and the format of declaration prescribed thereunder, there is no need to specify that the manufacturer is engaged in capacity of a job worker. It is now settled law that a job worker who undertakes manufacture of excisable products is the manufacturer for the purposes of the law and that the burden is not transferred to the principal manufacturer. The provisions of Rule 57G also do not make it obligatory to declare the status of manufacturer as job worker. The third observation is that the RT 12 returns do not show that the goods were manufactured on behalf of Dr. Beck & Co. From the narration in the Show Cause Notice, which was confirmed by the Id. Counsel, it appears that when the goods were cleared on payment of duty by the present applicants, using the Modvat credit of duty paid by Dr. Beck & Co. on the basic raw material and such clearance was done under the invoices in the name of Dr. Beck & Co. This was a most unusual circumstances which had attracted the attention of the department earlier. On 30-8-1996 the department was informed of such use of the invoices of Dr.

Beck & Co. The department took objection thereto and made certain queries in December, 1996. This fact was also known to the department from 24-6-1996. In such a circumstance it cannot be stated that the department was kept in the dark especially when copies of such invoices were annexed with the RT 12 returns.

6. Prima facie, therefore, the appellants appear to have made a strong case on limitation. We, therefore grant unconditional stay and waiver of the duty confirmed and the penalty imposed.

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