

H.E.G. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-27-1999

Reported in : (1999)(66)ECC698

Appellant : H.E.G. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This stay application is filed by the applicants for the waiver of pre-deposit of duty amounting to Rs. 11,35,000/- and penalty of Rs. 15,58,000/- and stay of the recovery proceedings.

2. Arguing for the applicants, Shri Ravi Holani, learned C.A. submits that issue relates to Modvat credit on capital goods as well as on inputs. He submits that dispute is in respect of the following items :- He said that the above items are Capital goods in terms of Rule 57Q and there was no justification to deny the Modvat credit. He also submits that alternative plea of their claim under Rule 57A has not been considered by the Commissioner while disallowing the Modvat credit.

Apart from that, shortage in transit has not been considered by the Commissioner while disallowing the Modvat credit. Department was of the view that shortage of weight on such account would be the subject matter of reduction of Modvat credit equal to the quantum of such shortage. The Modvat credit involved on such so called shortage is Rs. 7,79,223/-. In support of his contention, he referred to the decision of the Tribunal in the case of Commissioner of Central Excise, Rajkot v.

Bombay Dyeing & Mfg. Co. Ltd., reported in 1998 (97) E.L.T. 101, wherein it was held that payment of duty and taking of credit not to be regulated according to the weight of commodity on a particular date.

Gain or loss as long as established due to absorption or evaporation of moisture and in accordance with the non-accepted standard for such gain or loss in any industry, Modvat credit not to be denied on such difference in weight. He submitted that strong prima facie case is in favour of the party and in view of the various decisions of the Tribunal and of the respective High Courts, the stay may be granted unconditionally.

3. On the other hand, Shri Nayyar while justifying the findings of the Authorities below, submitted that merits and demerits are to be examined in details and a series of divisions is in favour of the Revenue disallowing the Modvat credit and all the pleas raised by the assessee have already been considered by the Commissioner as can be seen from the impugned order. He also referred to the decision of the Tribunal in the case of Guljag Chemicals Pvt. Ltd. v. Collector of Central Excise, Jaipur, reported in 1996 (87) E.L.T. 292, in support of his contention that loss by spillage or evaporation is not a waste, residue or by-product in terms of Rule 57D of Central Excise Rules, 1944 and the Modvat credit is not admissible in respect of such loss by spillage or evaporation.

4. We have carefully considered the matter. After hearing the submissions made by both the sides, we find that there is some force in the argument advanced on behalf of the Revenue that merits and demerits are to be examined in detail and that can be looked into at the time of regular hearing. At present, we are not convinced with the argument advanced on behalf of the assessee that strong prima-facie case is in their favour to grant stay as prayed for. However, taking over all facts and circumstances and giving credence to the submissions made by the C.A. and in view of the decision referred to by him, we are of the view that ends of justice would be met if the applicants are asked to pay 50% of the duty amount in question for the purpose of hearing the appeal. Accordingly, we direct the applicants to deposit 50% of the duty amount within eight weeks from the date of the receipt of this order. Subject to compliance, remaining 50% of the duty amount

as well as penalty amount is dispensed with and the recovery proceedings are hereby stayed during the pendency of the appeal. Non-compliance will be resulted in dismissal of the appeal. The matter to come up for reporting compliance and for further orders on 7-1-2000.

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