

**Vimal Moulders (India) Limited Vs. Commr. of Central Excise**

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

**Decided On :** May-01-2000

**Reported in :** (2000)(120)ELT517TriDel

**Appellant :** Vimal Moulders (India) Limited

**Respondent :** Commr. of Central Excise

**Judgement :**

1. The appellants had taken Modvat credit on inputs on the strength of dealers' invoices dated 19-9-1997 and 7-10-1997, which were invoices generated through computer. The jurisdictional Assistant Commissioner of Central Excise disallowed the credit so taken, on the ground that the invoices did not bear the pre-printed serial numbers as required by certain trade notices of the Delhi Commissionerate of Central Excise.

The Assistant Commissioner also imposed a penalty of Rs. 8,000/- on the party for alleged contravention of the requirements of the said trade notices read with Sub-rules 4 and 6 of Rule 57GG of the Central Excise Rules. The Commissioner of Central Excise (Appeals), however, allowed the above credit holding that such credit could not be denied on account of such technical violation of procedural requirements. The lower appellate authority, however, upheld the order of penalty for violation of procedural requirement under Trade Notice No. 77 dated 12-9-1997 of the Delhi Commissionerate. The present appeal before the Tribunal is against the imposition of penalty by the lower authorities.

2. I have carefully examined the orders of the lower authorities and have heard learned Advocate, Shri Naveen Mullick for the appellants and learned JDR, Shri T.R. Arunachalam for the respondent/Revenue.

3. Learned Advocate has reiterated the grounds of the appeal and has drawn my attention to the provisions of Sub-rule (8) of Rule 57-GG of the Central Excise Rules which was in force during the period of dispute (October, 1997) and provided that it was permissible for Modvat-taking manufacturers to use invoices generated through computers. Learned Advocate has contended that, in the light of this clear provision of law, it was permissible for the appellants to use the invoices in question with computer-printed serial numbers thereon for the purpose of availment of Modvat credit and, therefore, there was no warrant on the part of the lower authorities to arrive at the conclusion that the appellants had contravened the provisions of the sub-rule in the matter of taking the Modvat credit. Learned Advocate has also referred to Board's Circular No. 482/48/99-CX dated 23-8-1999 which was clarificatory to earlier circulars of the Board on the requirements of computer-generated invoices. The Board's circular, referred to by learned Advocate, clearly provides that Modvat credit should not be denied on the ground that the computerised stationery did not contain the pre-printed serial numbers but only contain serial numbers at the time of printing of the invoices. The circular mandated that show-cause notices for denial of Modvat credit should not be issued on account of absence of pre-printed serial numbers on computer-generated invoices. The circular further instructed the field officers to dispose of show cause notices already issued, on the basis of the instructions contained in the circular. Learned Advocate has relied on this circular of the Board and has submitted that Department is stopped from contending to the contrary since the appellants had acted in accordance with Rule 57GG (8) and also in terms of the circular of the Board, which is clarificatory. The penalty imposed by the lower authorities is not sustainable since there was absolutely no contravention of provisions of law in the matter of availment of the Modvat credit.

4. Learned JDR, Shri T.A. Arunachalam has opposed the above submissions on the strength of the findings and observations of the lower authorities and has pleaded for rejecting the appeal.

5. I have carefully examined the rival submissions and also the provisions of Rule 57GG (8) of the Central Excise Rules as well as those of the Board's circular cited by the learned Advocate. The charge of contravention of procedural requirement was levied against the party by the department on the strength of Sub-rules (4) and (6) of Rule 57GG as well as on the trade notice aforesaid. The department, while issuing the show-cause notice and the lower authorities, while passing the respective orders, appear to have done so regardless of the provisions of Sub-rule (8) of Rule 57GG. This Sub-rule, which was in force during the period of dispute, clearly provided that it was permissible to use invoices generated through computers. I have perused the provisions of this Sub-rule and I find that computer-generated invoices with computer-printed serial numbers are permissible for availment of Modvat credit. The Board's circular is virtually a clarification on this provision of law. The trade notice relied on by the lower authorities is no longer valid in the light of the Board's circular as well as the provisions of Sub-rule (8) *ibid*. The Department cannot validly argue against the provisions of the Board's circular or against the clear provisions of Sub-rule (8) *ibid*. I, therefore, cannot accept any of the arguments of learned JDR and I have to accept those of learned Advocate. In the light of the legal provisions and the circular cited by him, the orders of the lower authorities as regards imposition of penalty cannot be sustained. Accordingly, the impugned order is set aside as regards penalty and the appeal is allowed.

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