

**Commissioner of Customs and C. Ex. Vs. Hi-tech Polypack**

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

**Decided On :** Nov-15-2000

**Reported in :** (2001)(127)ELT118TriDel

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

**Respondent :** Hi-tech Polypack

**Judgement :**

1. Revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals). Brief facts of the case are that respondents were availing benefit of Modvat credit in respect of inputs used in the manufacture of their final product. From 1-4-1997, the appellant started availing the benefit of small scale exemption and opted out of the Modvat scheme. The respondents when opted out of the Modvat scheme are required to reversed credit taken on the inputs lying in stock or used in any finished excisable goods lying in stock as per Rule 57H(7) of the Central Excise Rules. The respondents reversed the amount of Rs. 1,05,863.50. A show cause notice was issued to the respondents asking for reversal credit on the inputs which were contained in the waste as on 1-4-1997. The adjudicating authority confirmed the demand. The respondents filed appeal and the Commissioner (Appeals) in the impugned order gave a finding of the fact that amount of Rs. 1,05,863.50 also includes that much amount of duty of inputs which were contained in the waste. Revenue filed this appeal.

2. Learned SDR appearing on behalf of the Revenue submits that the amount reversed by the respondents does not include the amount of credit of inputs

contained in the waste. He submits that as the credit has been taken by the respondents on the inputs contained in the waste, therefore, the respondents are required to reverse that credit also.

3. Learned Counsel appearing on behalf of the respondents submits that the respondents are required to reverse the credit on the inputs lying in stock or used in any finished goods lying in stock when they opted out of the Modvat scheme. He submits that the respondents reversed whole of the amount which includes the credit on the inputs contained in the waste. He, therefore, prays that the appeal be dismissed.

5. In this case when the respondents opted of the Modvat scheme they are required to reverse the credit under Rule 57H(7) of Central Excise Rules: "57H(7). - A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been availing of the credit of the duty paid inputs before such option is exercised, shall be required to pay an amount equivalent to the credit, if any, allowed to him in respect of inputs lying in stock or used in any finished excisable goods lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export." 6. The provisions of this rule clearly says that the manufacturer has to reverse the amount equivalent to the credit in respect of inputs lying in stock or used in any finished excisable goods lying in stock on the date when such option is exercised. The contention of the respondents that they had reversed the whole of the credit on the inputs lying in stock and the inputs used in the final product lying in stock including the inputs contained in the waste. The Commissioner (Appeals) in the impugned order gave a finding of fact in favour of the respondents. This finding of facts is challenged by the Revenue but Revenue has not produced any evidence in support of their contention.

7. In view of the provisions of Rule 57H(7) of the Central Excise Rules and in absence of any evidence contradictory the finding of fact arrived at Commissioner

(Appeals), I find no merit in the appeal. The appeal is rejected.

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