

Commissioner of Central Excise, Vs. M/S. Pfizer Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-21-2000

Appellant : Commissioner of Central Excise,

Respondent : M/S. Pfizer Ltd.

Judgement :

1. This appeal has been preferred by the Revenue against the impugned Order-in-Appeal dated 21.3.2000 passed by Commissioner (Appeals) vide which he had reversed the Order-in-Original dated 28.5.99 of the Deputy Commissioner disallowing the modvat credit to the tune of Rs.96,541/- by not condoning the delay of 76 days in filing the declaration under Rule 57 T of the Central Excise.

The respondents are engaged in manufacture of bulk drugs. They filed declaration under Rule 57 T before the Assistant Commissioner on 19.12.97 with a prayer to condone the delay of period of 76 days. The Assistant Commissioner however, refused to condone the delay and as a result thereof, the respondents were served with a show cause notice dated 23.6.98 to show cause as to why the amount of Rs.96,541/- of which they had wrongly taken the credit, be not recovered from them, under Rule 57-U of the Rules, along with interest. After getting their reply to that show cause notice, wherein they questioned the correctness of the demand, the Deputy Commissioner confirmed the demand of Rs.96,541/- under Rule 57 U of the Rules on them through Order-in-original dated 28.5.99.

3. Feeling dissatisfied with the above said order of the Deputy Commissioner, the respondents preferred the appeal before the Commissioner (Appeals) who through

impugned order in appeal reversed the same and allowed the credit of disputed amount by condoning the delay of 76 days.

4. The Revenue has come up in appeal before the Tribunal against the impugned order-in-appeal of the Commissioner (Appeals).

5. I have heard Shri S.C.Pusakaran, DR for the Revenue and Shri J.P.Kaushik, Advocate for the assessee.

6. The main ground on which the impugned order has been challenged by the Revenue in the grounds of appeal, is that the delay in filing the modvat declaration under Rule 57 T of the Rules could be condoned only by the jurisdictional Assistant Commissioner and not by the Commissioner (Appeals). The Commissioner (Appeals) could only remand the matter for readjudication if he was not satisfied with the order of the Assistant Commissioner. But in my view, this ground is wholly misconceived and not liable to be accepted. No doubt the initial power for condoning the delay in filing the declaration under Rule 57 T of the Rules for modvat credit, vested with the Assistant Commissioner, under rule 57 G of the Rules, but the order passed by the Assistant Commissioner disallowing the condonation of delay, could be appealed against before the Commissioner (Appeals) under Section 35 of the Act by the aggrieved party. The mere perusal of the subsequent Section 35 A which lays down procedure in appeal, shows that the Commissioner has got ample power to confirm, modify or alter the order appealed against before him. Even the Apex Court in 1999 (98) ELT 200 SC has observed that the appellate authority may have in deciding the question before it subject to the statutory limitations. Therefore, the Commissioner (Appeals) is fully competent to reverse the Order-in-Original of the jurisdictional/adjudicational authority and condone the delay in filing the modvat declaration by the assessee. In the instant case, the Commissioner (Appeals) had exercised this power and condoned the delay when the order-in-original of the adjudicational authority (Deputy Commissioner) who confirmed the demand by disallowing the condonation of delay in filing the declaration under Rule 57 T, was appealed against before by him by the respondents. Therefore, the impugned order in appeal passed by the Commissioner (Appeals) cannot be said to be without jurisdiction.

7. On merits, the impugned order of the Commissioner (Appeals) allowing the condonation of delay of 76 days to the respondents in filing the declaration under Rule 57 T has not been questioned before him at all.

The Commissioner (Appeals) has given valid reasons for condoning the delay and for reversing the Order-in-Original of the Deputy Commissioner. Therefore the impugned order in appeal passed by the Commissioner (Appeals) is perfectly valid and needs no interference.

8. In an exactly similar case 'reported' in 2000 (37) RLT 664, the Tribunal had earlier taken the view that the Commissioner (Appeals) has got powers to condone the delay in filing the declaration under Rule 57 T by the assessee. The ratio of the law laid down in that case squarely covers the case of the respondents.

9. In view of the discussion above, there is no merit in the appeal of the Revenue and the same is ordered to be dismissed.

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