

Commissioner of Central Excise, Vs. Piramal Spinning and Weaving Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-26-2001

Reported in : (2002)(145)ELT322Tri(Mum.)bai

Appellant : Commissioner of Central Excise,

Respondent : Piramal Spinning and Weaving Mills

Judgement :

1. Piramal Spinning & Weaving Mills, the respondent to this appeal, manufactured filament or staple fibre. It sent these fabrics for processing to processing house. After receipt of the processed fabrics, it cut them into lengths as desired by the buyers, folded them and stamp the price and other particulars relating to the fabrics. While doing so, it took credit of the duty paid by the processor on these goods and utilised this credit towards the duty that it paid on the stamped folded and packed fabrics that it cleared. The respondent's declaration under Rule 57G expressing its intention to take credit of the duty paid on the processed fabrics was sent by it to the Assistant Commissioner. The Assistant Commissioner replied advising the respondent that it was not entitled to take credit as the processes to which it subjected the fabrics were not manufacture as defined by law. The respondent however did not accept this clarification and wrote to the Chief Commissioner of Excise, seeking permission to take credit. It is contended that the Chief Commissioner orally told the representative of the respondent to continue to take credit, till the matter got clarified from the Central Board of Excise and Customs. There is however no evidence produced in support of this claim. What is

evident is that, the respondent continued to take credit and utilised the credit towards payment of duty till 9.3.1999. In the meantime, notices were being issued by the department to the respondent proposing to disallowance of the modvat credit taken and demanding recovery of the credit that it applied for payment of duty. These notices were finally adjudicated upon by any order of the Deputy Commissioner. In that order, the Deputy Commissioner held that the processes that the respondent undertook did not constitute manufacture and therefore the goods emerging as a result of these were not liable to duty. Hence it was not permissible to take modvat credit on the processed goods. He ordered recovery of duty amounting to Rs. 17.20 crores and imposed a penalty of Rs. 4.3 crores.

2. The respondent appealed this order. The Commissioner (Appeals) accepted the contention raised before him that if the processes of cutting of fabrics at the required length of the customers, stamping and packing that the respondent undertook did not constitute manufacture and therefore no duty was payable on the fabrics subjected to these processes, the respondent had utilised modvat credit that it took in the payment of duty and therefore there was no question of stating this once again. As to the penalty, he passed an order which is somewhat ambiguous. He noted that the appellant before him has followed the advice of the Chief Commissioner and therefore acted as bona fide.

In the absence of mala fide he was of the view that the penalty imposable on appellant before him could not be more than Rs. 5000/- However, he remanded the matter to the abjudicating authority to verify whether the credit was used exclusively for payment of duty on the stamped and folded fabrics. He notice that the clearances were in the full knowledge of the department and hence the question of imposition of penalty should not arise in normal circumstances. "This can be considered after verification of the facts which will prove the correctness or otherwise of the appellants averments. This is challenged by the department.

3. The department's appeal does not question the claim of the respondent that the Chief Commissioner did give instructions that the respondent should continue to take credit pending decision of its representation by the Board. It however contends that this instruction was not communicated to the respondent because it

was not correct. It is the contention that the Chief Commissioner was not proper authority to deal with modvat credit. The question however is not whether he was so capable or not. The point is that if he did not give instructions the respondent could not be accused of being acted irresponsibly or contrary to this. The fact that a representation was made by it to the Chief Commissioner and to the Board is clear from its letter dated 16.6.1999 in which the Board refers to its representation and states that credit could not be taken. The respondent therefore proceeded to act bona fide as the Commissioner (Appeals) finds. In that situation, on the assumption that the credit could not be taken, we do not find any ground for interfering the Commissioner (Appeals) view that penalty was not imposable in the facts and circumstances of this case.

4. Once the contention of the respondent that the credit that it took has been reversed by debit in the RG23A Part II when it utilised towards payment of duty. If the duty were not payable on the finished product, the respondent had made a debit of the modvat credit that it took. There would then the question of having paid the amount once again. This is what the Commissioner (Appeals) found. We therefore do not find ground for interference.

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