

**Cce Vs. Dhiman Industries**

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

**Decided On :** Feb-15-2002

**Reported in :** (2002)(81)ECC379

**Judge :** B T K.K.

**Appellant :** Cce

**Respondent :** Dhiman Industries

**Judgement :**

1. The respondents manufacture iron and steel products falling under Chapter 72. The Assistant Commissioner of Central Excise, Patiala, vide his order dated 8.3.99 has observed that the respondents availed the modvat credit of Rs. 1,13,511.05 on the alloy steel ingots falling under chapter heading 7204.00. He has observed that the party did not make any declaration with regard to this item under Rule 57G of Central Excise Rules, 1944. It is observed that the party filed an application for condonation of delay in making the declaration but the Assistant Commissioner in his order has held that the party availed the modvat credit on the ingots in the months of August and September 1994 whereas the COD application is filed on taking and availing the credit nearly after two months; that under Rule 57G(9), a request for condonation of delay has to be filed before taking the credit. Thus request of the party for condonation of delay in availing the modvat credit is rejected.

2. The Assistant Commissioner has further denied the modvat credit to the party on the ground that the dealers invoices on the strength of which they availed the modvat credit did not contain the particulars of duty payment by the original manufacturer. The details relating to these are as follows: (i) The modvat credit of Rs. 2,49,671.80 taken on the strength of invoices issued by M/s. R.P. Steel Industries.

(ii) The modvat credit of Rs. 63,900 is availed on the strength of the invoices issued by M/s. Star Wire (India) Limited.

(iii) The modvat credit of Rs. 64,603 is availed on the strength of M/s. Data Steels, Mandi Gobindgarh.

3. As per the particulars above, the Assistant Commissioner disallowed the modvat credit totalling amounting to Rs. 3,13,571 to the party on the ground that the dealers invoices on the strength of which they availed the modvat credit did not contain full particulars of duty paid by the original manufacturer of the goods. He has also imposed a penalty of Rs. 2 lakhs on the appellants.

4. The party filed an appeal and the same is allowed by the Commissioner of Central Excise (Appeals), Chandigarh, vide his order dated 30.10.2000.

5. This is a Revenue appeal against the impugned order of the Commissioner (Appeals), Chandigarh. I have heard Shri H.C. Verma, Learned JDR for the appellants and Shri K.K. Anand, Id. Advocate for the respondents. I have considered the submissions made before me.

Sub-rule (9) of Rule 57G at the relevant time provided that where a manufacturer for sufficient reason was not in a position to make a declaration under Sub-rule (1) and makes the declaration subsequently, the Assistant Commissioner may subject to the provisions of Sub-rule (10) condone the delay in filing such declaration and allow manufacturer to take the credit of duty paid on the inputs. It is observed that in this case there is no other discrepancy found by the original authority. The request of the party for condonation of delay in filing the declaration is rejected on the ground that the credit is taken even before filing the declaration. In my view,

this is not a valid ground to deny the request of the party for condonation of delay in filing the declaration. Admittedly, the inputs are duty paid and the same have actually been used in the manufacture of the final products.

I, therefore, find no infirmity in the order of the Commissioner (Appeals) which would call for interference. The Revenue appeal in respect of the credit of Rs. 1,13,511.05 is therefore rejected. As regards the appeal relating to the modvat credit availed on the invoices issued by the dealers which did not contain the particulars of the duty payment by the original manufacturers, the Id. Counsel for the respondents submits that they have since collected supplementary documents to establish the particulars of duty payment by the original manufacturers in each. In this view of the matter, the case would call for going back to the original authority for verification and reconsideration. The appeal of the Revenue is thus allowed by remand in respect of the modvat credit of Rs. 3,13,571. The Revenue appeal is thus disposed of in these terms.

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