

Mangalam Enterprises Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-13-2002

Reported in : (2003)(159)ELT393Tri(Mum.)bai

Judge : K Usha, N T C.N.B

Appellant : Mangalam Enterprises

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. When these appeals came up for hearing on 31-10-2002, none appeared for the appellants. A letter dated 36-10-2002 has been filed by M/s.

Arhat Industries, asking for adjournment on the ground that the appellant's factory is closed since 1997 and with the death of the main Director in May 1992, there was nobody to take care of the matter. The letter has, accordingly, sought adjournment of the case. Since the appeals are of 1998 and the request for adjournment is of indefinite, the adjournment sought is denied. We proceed to dispose of the appeals after hearing the learned SDR.2. The issue involved in both the appeals is common i.e. appellants' claim for Modvat credit in respect of partially oriented yarn (POY).

Such yarn was received and utilized by the appellants in the manufacture of draw to twisted yarn. Credit of duty paid on POY which was utilized as input, has been denied solely on the ground that the consignments of inputs were not directly

received into the factory, but were stored for sometime in godowns located outside the factory, before being brought into the factory for use in manufacture. The appellants' explanation is that the storage outside the factory for a brief period was on account of shortage facility in the factory premises and that such short term storage outside the factory premises is no ground for denying Modvat credit. In their submissions before the lower authorities and in the present appeals they have submitted that the purchase and utilization of the inputs was entirely in accordance with Modvat rules inasmuch as the inputs were purchased under invoices of manufacturers and taking of credit was within the prescribed time limit of six months. They have also submitted that the credit on inputs is not to be denied on technical grounds. Specific reliance has also been placed on the decisions of this Tribunal in the case of *Ahdhra Electro Galvanising v. CCE*, 1995 (80) E.L.T. 322 (T) = 1995 (60) ECR 167; *CCE v. Tamil Nadu Petro Products*, 1996 (84) E.L.T. 263 (T) = 1996 (64) ECR 424 (T); *CCE v. Mysore Lac & Paints Works*, 1991 (52) E.L.T. 590 (T) = 1991 (33) ECR 329 (T); *Thermax Ltd. v. Collector of Central Excise Pune*, 1993 (22) ETR 663 etc. and Trade Notice No. 46/96 dated 21-8-96 and Trade Notice No. 27/96 dated 30-5-96 of the Mumbai Commissioner-1.

The appellants have pointed out that these circulars specifically permitted storage of inputs outside the factory premises, upon seeking permission from the Commissioner.

3. It is clear from the records of the case that there is no dispute whatsoever about the receipt of the inputs in the factory and its utilization by the appellant in the manufacture of finished products.

Similarly the aforesaid circulars of the Commissioner and Circular No.206/40/96 CX., dated 1-5-96 issued by the Central Board of Excise and Customs permit storage of inputs outside the factory premises. The decision of the Tribunal in *Thermax* case also relates to storage of goods outside the licensed factory premises and the Tribunal held that the credit was permissible. Since both the sides are not disputing the actual receipt of duty paid inputs and their utilization in manufacture of specified final products, we find no justification for denying the

credit or imposition of penalty. The deviations from normal practice necessitated by business exigencies are no ground for denial of legally available facility. The storage of inputs outside the factory premises, prior to being brought to the factory, is specifically recognized by the aforesaid Circulars of the Board and the Commissioner.

4. In view of what has been stated above, the appeals are allowed after setting aside the impugned order. Appellant shall be entitled to consequential relief if any.

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