

Pressure Sensitive Systems Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-23-2003

Reported in : (2003)(160)ELT404Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Pressure Sensitive Systems

Respondent : Commissioner of Central Excise

Judgement :

1. Appeal taken up for disposal with the consent of both sides, after waiving deposit.
2. The appeal is against the order of the Commissioner (Appeals) confirming a penalty imposed upon the appellant for the reason that it incorrectly utilised Modvat credit of the amount paid under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 on inputs towards payment of the basic excise duty on the final product.
3. The Counsel for the appellant agrees that this course of action adopted by it was not permissible by law. He says however that this was done due to inadvertence, and that the assessee has reversed the credit as soon as this was pointed out by the department. He contends that in a situation of this kind, where there was no mala fide, penalty was not imposable. He cites the decision of this Tribunal in Aromate (Cal.) Private Ltd. v. CCE - 1999 (106) E.L.T. 468.

4. The departmental representative contends that this was not an isolated case, and that the assessee continued the wrong practice for more than two years, when the slightest effort by it would have shown that this was not a permissible course of action.

5. The penalty has been imposed under Rule 173Q and it is Clause (BB) of Sub-rule (1) of this rule, relating to Modvat credit, that would apply. This rule renders liable to penalty any person who takes credit wrongly or without taking reasonable steps to ensure that appropriate duty has been paid on the goods. The appropriate duty in this case was the basic excise duty. Since it is the basic excise duty that has been paid, and it is clear that the appellant had not taken any steps to verify what was paid was basic excise duty. On the other hand, the fabrics which the raw material accounting for significant part of the appellant, were not liable to basic excise duty at all being leviable under the 1957 Act, it is difficult for us to accept the appellant, who, we are told, has been engaged in this manufacture from 1992 onwards, could not have been known that the basis duty was not payable on the fabrics in question. On this consideration, therefore, we hold that the decision of the Tribunal in *Aromate. (Cal.) Private Ltd. v. CCE - 1999 (106) E.L.T. 468* would not apply to the facts before us. The penalty was therefore rightly imposable. However, having regard to the fact of this case we reduce the penalty from Rs. 60,000/- to Rs. 20,000/-.

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