

Prudential PharmA. Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : May-13-2003

Reported in : (2003)(161)ELT641Tri(Bang.)

Judge : G B Deva

Appellant : Prudential PharmA. Ltd.

Respondent : Commissioner of C. Ex.

Advocate for Pet/Ap. : Shri. T. Ramesh

Judgement :

1. This appeal arises out of and is directed against the impugned order dtd. 9-5-2000 passed by the Commissioner of Central Excise (Appeals), Hyderabad. The issue relates to Modvat credit. The Assistant Commissioner vide his order, ordered reversal of the credit taken by the appellants for Rs. 5,82,950/- under Rule 57U of Central Excise Rules, 1944. He also imposed penalty of Rs. 15,000/- under Rule 173Q of the Central Excise Rules, 1944. The party has become unsuccessful even on appeal filed before the Commissioner (Appeals).

2. The Commissioner (Appeals), while dismissing the appeals observed that the appellants should have sought permission from the Commissioner of Central Excise for transfer of the Modvat credit on capital goods from Pharmasia Drugs & Chemicals Ltd., to them. Since no such permission was sought or obtained as required under Rule 575(4) of the Central Excise Rules, 1944, Modvat credit of Rs.

5,82,950/- has been rightly denied by the Assistant Commissioner. Since the appellants have taken the Modvat credit in contravention of Rules 57T, 57S(4) and 173G of Central Excise Rules, 1944, the imposition of penalty on them is also in order.

3. Shri T. Ramesh appearing for the appellants submitted that there was only a mere change in the name of the Company. The name of M/s.

Prudential Pharmaceuticals Ltd. was incorporated in the Registration Certificate in place of M/s. Pharmasia Drugs & Chemicals Ltd. Originally it was Pharmasia Drugs and Chemicals Ltd. and name of the Company has been changed into M/s. Prudential Pharmaceuticals Ltd. in April, 1995 and same was duly intimated to the Department on 6-4-1995.

He said that there was no mandatory requirement to take permission under Rule 578(4) whenever name was changed, nevertheless same was intimated to the Department and that itself can be construed as permission.

4. Furthermore, in the case of Sushripada Chemicals v. CCE -1996 (88) E.L.T. 109 (Tri.), the Tribunal has taken a view that fresh declaration after amalgamation of the unit is only a technical requirement and its violation, not the substantive violation of Rule 57G, since declared inputs and outputs remand same, credit not to be reversed in that circumstances.

5. Similar view was taken subsequently in the case of Shree Products v.CCE, Pune - 1999 (112) E.L.T. 1057 (Tri.). In that case, it was held that fresh declaration was not necessary when there is only change in the control over the unit consequent on amalgamation, and in the circumstances, even if a declaration by the new unit is called for, it can only be construed to be a technical requirement and not a substantive violation of Rule 57G, of the Central Excise Rules, 1944.

He said that he stands on a better footing in the instant case since there was neither change in the control over the unit nor it was amalgamated and it was merely a change in the name of the Company.

7. On a careful consideration of the submissions made by both sides with reference to the facts, I do not find any justification to direct the party to reverse the credit, since there was only change in the name of the Company. Furthermore, the change in name was duly intimated to the Department at the earliest possible time. In the facts and circumstances, following the ratio of the aforesaid decision, I accept the plea of the party and accordingly, this appeal is allowed with consequential relief, if any.

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