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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-09-2003

Reported in : (2004)(91)ECC365

Judge : S T Gowri

Appellant : Chlochem Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. In the order impugned in the appeal, the Commissioner (Appeals) does not find it possible to interfere with the order of the Assistant Commissioner impugned before him. In his order, the Assistant Commissioner disallowed reversal of modvat credit of Rs. 406921.16 and imposed a penalty of Rs. 5000/- on the appellant. The Assistant Commissioner was adjudicating on a notice issued to the appellant proposing these actions on the ground that, following shifting of its factory from its premises at Phase II GIDC, Vadodara, to Phase III, the appellant without obtaining requisite permission from the authority transferred the modvat credit to the new factory.

2. The appellant is absent and unrepresented despite notice and have not filed any written submission. Therefore, I read the memorandum of appeal and also heard the departmental representative.

3. The contention of the appellant is that the report that it had made on 26.3.1993 for transfer of the credit which has not been taken into account. The notice proposing to deny credit is barred by limitation having been issued beyond six months from the date of taking credit.

These ground are mutually contradictory. If, as is claimed by the appellant, permission was not given on the application for transfer of credit on 26.3.19093, the appellant cannot, at the same time, claim that the credit has already been taken and therefore the notice of 18.10.1993 is barred by limitation. The appeal does not indicate when actually the factory was shifted. From the letter dated 26.11.1992 of the Gujarat Pollution Control Board to the appellant declining to accept the request made by shifting of the plant to Phase II and ordering to discontinue the production at the existing location from December 1992. It is reasonable to conclude that the factory would have been shifted within a month thereafter. The claim for transfer of credit was only made on 26.3.1993 by which time the credit had been taken and availed of. There was therefore nothing irregular or incorrect in the Commissioner (Appeals) order in declining to consider this aspect.

4. The notice to the appellant invoked the provisions of Rule 571. The sub-rule that will apply is clearly Sub-rule (2) and not Sub-rule (1).

Sub-rule (1) would apply in a case where credit of duty has been taken on account of error, omission or misconstruction on the part of an officer or a manufacturer, or an assessee. That is not the case here.

The inputs on which credit had been taken in its old factory was being shifted to the new factory. There being no provision in law for such act the inputs have therefore not been accounted for as having been disposed of in the manner specified in Sub-rule (2) of Rule 571 as is clearly contradictive. The time limit for recovery of duty in terms of this sub rule is not barred by limitation. The contention therefore cannot be accepted.