

Creative Enterprises Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-28-2003

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

Appellant : Creative Enterprises

Respondent : Cce

Judgement :

1. The appellants are engaged in the process of re-packing of Elmoluft 1A on behalf of Schenectady Beck India Ltd. They received the drug in bulk packs from Dr. Beck & Co. (I) Ltd, and repacked them into small marketable packages. They paid Central Excise duty on the repackaged goods. They also took credit of the duty paid on the bulk drug received by them. That activity of repacking was taken as manufacture and the bulk drug was treated as input and the repackaged drug as final product. Under the impugned order, the adjudicating authority has held that the appellants' activity of repacking did not amount to manufacture and consequently they could not have taken credit of the duty paid on the bulk drug and used the same for payment of duty on the repackaged goods. The impugned order has, therefore, demanded the amount taken as modvat credit and imposed penalty on the appellants.

While doing so, no adjustment towards the duty paid on the repackaged goods has been made. The appellants have submitted that the demand made in the impugned order is clearly illegal. It is submitted that the appellants were registered with the Central Excise Department as manufacturer and the payment of duty on

the repackaged goods was made by the appellants and accepted by the Revenue. In such a case, it was not open to the Revenue to deny credit on inputs. It is also submitted that in any event, the credit could not have been denied while simultaneously retaining the duty paid. It is the appellant's submission that the finding, that their activity did not amount to manufacture, apply as much to levy of duty as to granting modvat credit. The learned counsel has also pointed out that a contrary order has been passed for a subsequent period by the Commissioner (Appeals) being order-in-appeal no. YPP/944/SRT/2002/4636 issued on 10.10.2002.

2. We have perused the records and have considered the submissions made by both sides. The present order is clearly unjust and cannot be allowed to stand. The appellants are right in their contention that the finding regarding manufacture applies equally to levy of duty as well as eligibility to modvat credit. If there was no manufacture, there could be no payment of duty also. There is no dispute that the appellants had paid a higher amount of duty on the goods than the credit taken. If the credit taken was not eligible, what was required was only to adjust the duty paid against that credit.

3. In view of the observations made above, the impugned order is set aside and the appeal is allowed.

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