

**National Information Vs. C.C.E.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Oct-25-2004

**Reported in :** (2005)(179)ELT404TriDel

**Judge :** A T V.K., P Bajaj

**Appellant :** National Information

**Respondent :** C.C.E.

**Judgement :**

1. This appeal has been directed by the appellants against the impugned order-in-appeal vide which demand of Rs. 62,854/- with penalty of Rs. 5,000/- has been confirmed against them.

2. The facts are not much in dispute. The appellants during the period in dispute (September, 1999), cleared their product known as NFMD System with Accessories valued at Rs. 7,85,680/- without payment of duty under Notification No. 10/97-CX, dated 1-3-1997. But they availed the Modvat credit of the duty paid on the inputs utilised in the manufacture of that product. They were required to maintain separate inventory and accounts for the modvatable inputs used in the exempted goods. Having contravened the provisions of Rule 57CC (9) of the Rules, they were served with a show cause notice for payment of duty @ 8% of the price of the goods cleared by them at nil rate under exemption notification. The adjudicating authority confirmed the demand of Rs. 62,854/- with penalty of Rs. 5,000/- through the order-in-original which has been confirmed by the

Commissioner (Appeals) vide the impugned order-in-appeal.

3. The only contention raised by the learned Counsel is that, the appellants had reversed the entire Modvat credit and as such they could not be called upon to pay duty at 8% of the price of the cleared goods under exemption notification. But we are unable to subscribe to this contention of the learned Counsel. Under Rule 57CC(9) of the Rules, the appellants were duly bound to maintain separate inventory and accounts for the modvatable inputs intended to be utilised by them in the manufacture of exempted goods, but admittedly, they did not do so.

Therefore, under the said rule, they are duty bound to pay the duty @ 8% of the price of the exempted goods. This liability under the said Rule could not be avoided by them, by reversing the Modvat credit, as alleged by them. Moreover, how and in what manner they calculated the Modvat credit amount and reversed it, remains unexplained. They did not maintain any separate inventory and the accounts in respect of the duty paid inputs utilised in the manufacture of the exempted goods and on which they had availed the Modvat credit. Under Rule 57CC no exemption is provided to an assessee from making payment of the duty @ 8% of the price of the exempted goods cleared by him in the event of reversal of credit earlier availed by him on the inputs utilised therein.

Therefore, the duty demand under this Rule had been rightly raised and confirmed against the appellants by the authorities below. We do not find any illegality in the impugned order.

4. Another argument of the learned Counsel that no mechanism has been provided for the recovery of the amount under Rule 57CC and as such the demand could not be confirmed, is also wholly mis-conceived. The recovery of the duty amount under the said Rule is in lieu of the wrongful availment of the Modvat credit by the appellants on the inputs utilised in the manufacture of exempted goods. The law laid down in the case of *Confident Dental Equipment Ltd. v. CCE, Bangalore, 2004 (171) E.L.T. 473*, referred to by the learned Counsel regarding the non-recovery of the amount under Rule 57CC, is not attracted to the facts of the present case, in the light of the discussion made above.

5. Consequently, the impugned order of the Commissioner (Appeals) is upheld and the appeal of the appellants is dismissed.

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