

Unimed Technologies Ltd. Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-16-2004

Judge : A Wadhwa, S T S.S.

Appellant : Unimed Technologies Ltd.

Respondent : The Commissioner of Central

Judgement :

1. The prayer in the stay petition is to dispense with the condition of pre-deposit of duty of Rs. 34,04,320/- (Rupees thirty four lakhs four thousand three hundred and twenty only) and personal penalty of Rs. 10 lakhs (Rupees ten lakhs only). The said demand has been confirmed against the appellants on the ground that as they were clearing their final products under exemption and as they had availed modvat credit in respect of the common inputs, they were required to pay an amount equal to 8% of the total price of the exempted goods.

2. The appellant's contention duly represented through Shri Prakash Shah, Ld. Advocate is that at the time of clearances of the exempted goods, they were reversing the modvat credit availed on the inputs used in the manufacture of the said exempted goods. As such, it had the effect as if no modvat credit was ever taken on the said inputs.

Drawing our attention to the provisions of Rule 6 (3) (a) of Cenvat Credit Rules 2002, he submits that an option has been given to the assessee to either pay back the modvat credit so availed or to pay 8% of the final value of the exempted

goods. In any case, Ld. Advocate submits that the Commissioner, while confirming the demand of duty has not given any adjustment of the credit actually reversed by them.

However, Shri Prakash Shah does not plead any financial hardship.

3. Countering the arguments, Shri Vimlesh Kumar, Ld. SDR draws our attention to the provisions of Rule 6 (3). He submits that an assessee is entitled to reverse back the modvat credit of duty paid on the inputs only in case of specified goods under the provisions of Sub-clause (a). In all other cases he is required to follow Sub-clause (b) and clear the exempted goods on payment of an amount equal to 8% of the price of the goods. Inasmuch as the appellant's product is not a specified item under Rule 6 (3) (a), they have necessarily to follow the provisions of Rule 6 (3) (b).

4. We have considered the submissions made by both sides and are of the view that prima facie the appellants has not been able to make out a case so as to allow the stay petition unconditionally. It appears that Sub-rule (3) of Rule 6 gives an option to the manufacturer in respect of the two arenas. If the goods are specified under Clause (a), they can clear the same on reversal of modvat credit, where a common account has been maintained. In all other cases, Sub-clause (b) would get attracted. If legislature intended to allow the manufacturers to clear the exempted goods after reversing the modvat credit, in all other cases also, there was no requirement to classify the goods under two different Clauses as (a) and (b). As such, we are of the view that the appellants need to be put to some conditions of pre-deposit.

5. Accordingly, after taking into consideration of the entire facts and circumstances of the case, we direct the appellant to deposit an amount of Rs. 5 lakhs (Rupees five lakhs only). At this stage, Ld. Advocate prays that they would deposit the amount within a period of one week and revenue should be directed to lift the detention order and release the detained goods. In view of the above, we direct the appellants to deposit the amount within a period of one week the revenue would release the goods immediately thereafter.

6. Matter to come up for ascertaining compliance for final disposal of the appeal on 29/12/2004.

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