

**Amrit Paper Vs. Commissioner of Central Excise**

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

**Decided On :** Jan-10-2005

**Reported in :** (2005)(100)ECC340

**Judge :** S Kang, Vice-

**Appellant :** Amrit Paper

**Respondent :** Commissioner of Central Excise

**Judgement :**

2. The appellant filed this appeal against order-in-appeal passed by the Commissioner (Appeals) whereby the refund claim of the appellant in respect of Rs. 8,42,385/- is rejected.

3. The brief facts of the case are that the appellants are engaged in the manufacture of paper and paper board falling under Chapter 48 of the Tariff. A Notification No. 6/2000-C.E., dated 1-3-2000 was issued whereby the product manufactured by the appellant was exempted from payment of duty during the month of March 2000. They availed the credit as well as cleared the goods under the exemption notification.

Thereafter the appellant suo moto reversed the credit of Rs. 1,92,365/- to avail the exemption. Thereafter the appellant deposited the duty on 30-8-2000 for the month of March 2000 and also applied for refund of Modvat credit of Rs. 1,92,365/- which was already reversed by them. The above mentioned refund was

allowed by the order passed by the Assistant Commissioner on 13-12-2001. Thereafter, the appellant suo motu again reversed the amount of Modvat credit and filed the refund claim on 12-7-2001 in respect of the duty paid on 30-8-2000 for the month of March 2000 claiming the benefit of Notification No. 6/2000-C.E. The refund claim was rejected by the Assistant Commissioner. Thereafter the appellant filed appeal before the Commissioner (Appeals) and the Commissioner vide impugned order dismissed the appeal.

4. The contention of the appellant is that they had already reversed the credit taken during the month of March 2000, therefore, they are entitled for the benefit of Notification and duty paid on 30-8-2000 by them requires to be refunded. The appellant also relied upon the decision of the Hon'ble Supreme Court in the case of Orissa Extrusions v. C.C.E. reported in 2000 (115) E.L.T. 30 (S.C.) = (2000) 2 SCC 179 where the Hon'ble Supreme Court while interpreting the provisions of Notification No. 180-C.E. of 1988 held that as per the conditions of the notification, there is no need for reversal credit where the aluminium pipes were cleared for intended use in the manufacture of sprinkler equipment for agricultural irrigation.

5. The contention of the Revenue is that the appellant during the month of March 2000 availed the credit and also cleared the goods at Nil rate of duty under Notification No. 6/2000-C.E. As the appellant cleared the goods and availed the credit therefore, the appellants are not entitled for the benefit of exemption notification. The contention of the Revenue is that thereafter the appellant reversed the credit and subsequently paid the duty for the month of March 2000 and filed the refund claim in respect of the credit reversed by them and the refund was allowed. In these circumstances, the contention is that as the appellant availed the benefit of credit in respect of the inputs for the month of March 2000, therefore, they are not entitled for the benefit of notification.

6. In this case the dispute is in respect of duty paid for the month of March 2000 as the Notification No. 6/2000 was issued w.e.f. 1-3-2000 granting exemption to the goods manufactured by the appellant. The appellant wants to avail the benefit of notification as per the Rules during the relevant period. The assessee can avail the benefit of credit in respect of duty paid on inputs used in the manufacture of

final product to pay the duty on the final products. As the final product is exempted, therefore, the assessee cannot take a credit in respect of the duty paid on the inputs. The appellant paid duty subsequently in respect of the goods cleared in the month of March 2000 and filed a refund claim in respect of the credit already reversed. The refund of the credit on the inputs was allowed on 13-12-2000. The appellant had not challenged the refund claim order passed by the Assistant Commissioner granting refund of the credit. It means the appellant availed the credit for the month of March 2000 and also filed a refund claim in respect of the duty paid for that month by claiming the benefit of notification. The appellant relied upon the decision of the Hon'ble Supreme Court in the case of Orissa Extrusions (supra). I find that the fact of that case are different from the facts of the present case. In the case of Orissa Extrusions, the assessee, was manufacturing aluminium pipes which are dutiable. An exemption notification was issued i.e. 180-C.E., in respect of the pipes which are cleared for intended use for the manufacture of sprinkler equipment of agricultural irrigation purposes. The assessee cleared certain pipes under this exemption notification and there is no condition in the notification that assessee cannot take credit in respect of inputs used in the pipes which are cleared for specific use, whereas the other pipes which are cleared are dutiable. In the present case the facts are different. All the goods were manufactured by the appellant under Chapter 48 were exempted from payment of duty and the appellant filed a refund claim in respect of duty paid for the month of March 2000. As in the March 2000, the appellant claimed the refund and credit, which was allowed, therefore, the refund of duty was rightly rejected. I find no infirmity in the impugned order, the appeal is dismissed.

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