

Magnam Paper Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-18-2005

Reported in : (2005)(192)ELT236TriDel

Judge : A T V.K., P Bajaj

Appellant : Magnam Paper Ltd.

Respondent : Cce

Judgement :

1. The issue involved in these two appeals, filed by M/s. Magnum Papers Ltd., is whether the MODVAT Credit of the duty paid on inputs is available to them during the month of March, 2000.

2. Shri Rajesh Chibber, learned Advocate, mentioned that the Appellants have two units manufacturing paper and paper board and avail of MODVAT Credit of the duty paid on inputs, i.e. a number of chemicals; that they also avail MODVAT Credit of the duty paid on capital goods; that Notification No. 6/2000-CE, dated 1.3.2000 (Sr. No. 77) grants exemption on first clearance on 210 M.T. of Paper and Paper Board for the month of March, 2000; that the Department has disallowed the MODVAT Credit involved in inputs contained in the semifinished/finished goods lying in stock as on 1.3.2000. The learned Advocate submitted that the benefit of Notification No. 6/2000 (Sr. No. 77) was available subject to the condition No. 15 specified in the Notification; that condition No. 15 does not mention any restriction about the availment of MODVAT Credit; that in

respect of other products whom the exemption was granted under the said Notification, there was specific condition in the notification that the MODVAT Credit is not availed; that in view of this MODVAT Credit cannot be disallowed to them under Rule 57H of the Central Excise Rules, 1944. He also mentioned that the Appellants were having stock of finished goods in which modvatable inputs had been used and those goods were intact with them till they again started paying duty after availing exemption, on 11.3.2000. Finally he submitted that no penalty is imposable as the MODVAT Credit was not taken by them wrongly; that further as the issue is one of interpretation Rule 57H, no penalty is called for.

3. Countering the arguments, Shri H.C. Verma, learned D.R., reiterated the findings as contained in the impugned order.

4. We have considered the submissions of both the sides. The facts not disputed are that the Appellants avail of MODVAT Credit of the duty paid on inputs under Rule 57A of the Central Excise Rules, 1944 and they availed of exemption under Notification No. 6/2000 (Sl. No. 77) in respect of their final products with effect from 1.3.2000. There is no force in the submission of the learned Advocate that notification does not debar the availment of Modvat Credit as one of the condition for availing the benefit of exemption, there is no necessity that the Notification should contain such a condition. Once they are availing the benefit of MODVAT Credit, all the provisions relating to Modvat Credit will apply to them. Rule 57H(7) of the Central Excise Rules, 1944 reads as under at the material time: A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been availing of the credit of the duty paid on inputs before such option is exercised, shall be required to pay an amount equivalent to the credit, if any, allowed to him in respect of inputs lying in stock or used in any finished excisable goods lying stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

5. Sub-rule (7) of Rule 57H makes it mandatory for a manufacturer who opts for exemption from the whole of the duty under a Notification based on the value or quantity of clearance to pay an amount equivalent to the credit in respect of inputs lying in stock or used in any finished excisable goods lying in stock on the date of exercising option and the balance of credit, if any, still remaining shall lapse.

The Appellants' matters are squarely covered by Sub-rule (7) of Rule 57H as (1) they were availing Modvat Credit of the duty paid on inputs, (2) they have opted for exemption from the whole of the duty excise leviable on goods manufactured by them under Sl. No. 77 of Notification No. 6/2000 and (3) this notification provides exemption based on the quantity of clearance in as much it exempts: (a) during the period from 1.3.2000 to 31.3.2000, up to first clearance of any aggregate quantity not exceeding 210 M.T.; and (b) on or after 1.4.2000, in any subsequent financial year, upto first clearance of an aggregate quantity not exceeding 2500 M.T. Their contention that they did not make use of stock for claiming exemption up to 210 M.T. is not tenable as Rule 57H(7) is very specific. Once the option to avail exemption is exercised, provisions of Sub-rule (7) comes into operation. Accordingly we uphold the disallowance of Modvat Credit. However, we agree with the learned Advocate that this is not a case calling for imposition of penalty. We, therefore, set aside the penalty imposed on the Appellants. But for this modification both the appeals are rejected.

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