

Perfect Thread Mills Ltd. and S.P. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-28-2005

Reported in : (2005)(102)ECC287

Judge : M T K.C.

Appellant : Perfect Thread Mills Ltd. and S.P.

Respondent : Cce

Judgement :

2. The appellants were manufacturing both the dutiable and exempted goods from common inputs. While clearing the exempted goods, they were debiting the Modvat credit on taken the inputs vised in the manufacture of such exempted goods. However, on visit of the preventive officers to the factory of the appellants on 10.1.03, it was found that they had cleared the exempted goods but did not debit the Modvat credit amounting to Rs. 3,06,574 at the time of clearance of exempted goods and utilised such credit for clearance of dutiable goods. On being pointed out by the department, the appellants accepted their mistake and debited the amount on 11.1.03 and 15.1.03. Subsequently, adjudication proceedings are initiated for imposition of penalty on both the appellants. The Commissioner (Appeals) upheld the order of the original authority imposing penalty of Rs. 3,06,574 on M/s Perfect Thread Mills Ltd. but reduced the penalty imposed on Shri S.P. Mehta, General Manager of the Perfect Thread Mills Ltd. 3. Shri Vipul Raheja, Ld. Advocate pleaded that since the appellants have already paid the duty before issue of show cause notice, no penalty is imposable in view of the Larger Bench

decision Montell (I) Ltd., 2005 (98) ECC 707 (T): 2004 (96) ECC 180 (Tri.-LB).

4. Shri V. Valte, Ld. SDR pleaded that in case of Machino Montell (supra), the penalty was not imposed as there was no intention to evade payment of duty since the appellants had paid the duty voluntarily. In the present case, the appellants have failed to debit the amount of credit at the time of clearance of exempted goods but they also utilized the amount of credit at the time of clearance of dutiable goods. Thus, intention to evade payment of duty was clear and in such a situation, penalty is imposable despite the fact that the credit was debited before the issue of show cause notice. The appellants very well know that they were required to debit the Cenvat credit at the time of clearance of exempted goods, which they deliberately did not do.

Therefore, penalty is imposable. He relied on the decision of the Tribunal in the case of CCE, Indore v. Deepak Spinners Ltd., and CCE 5. On careful consideration of the submissions made by both the sides, I find that in this case, the appellants had failed to debit the Cenvat Credit taken on inputs used for manufacture of exempted goods, at the time of clearance of exempted goods. They also utilized this credit for clearance of dutiable goods. Thus, the intention to evade payment of duty is quite clear. Therefore, penalty is imposable on the appellants, M/s. Perfect Thread Mills Ltd. However, considering the fact that the appellants had deposited the disputed amount before issue of show cause notice, the penalty is reduced to Rs. 50,000. I find no ground of imposition of penalty on Surya Prakash Mehta, General Manager of M/s.

Perfect Thread Mills Ltd. Therefore, the penalty imposed on Shri S.P.Mehta is set aside with consequential relief, if any. Ordered accordingly.

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