

**Commissioner of Central Excise Vs. Orkay Polyesters Ltd.**

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

**Decided On :** May-16-2005

**Reported in :** (2005)(189)ELT191Tri(Mum.)bai

**Judge :** S T S.S., T Anjaneyulu

**Appellant :** Commissioner of Central Excise

**Respondent :** Orkay Polyesters Ltd.

**Judgement :**

2. Revenue is in appeal against the order of CCE(A), who after finding that the Id. adjudicating authority has discussed at length the reason for non imposition of penalty which are found to be not justified and the stand of the department that substantial revenue is involved cannot be a coherent reason or ground for a review dismissed the revenues appeal filed before him.

3. Revenue in the present appeal filed before us has taken the grounds - (i) CCE(A) erred in passing the order as the credit was availed without observing the procedure.

(ii) Penalty provision of Rule 173Q of Central Excise Rules, 1944 were correctly involved in the notice & the adjudicator has found that the assessee has availed and utilised the credit on the input which was not proper and held the same to be recoverable & payment of duty on methanol was denied.

(iii) Non imposition of penalty cannot be justified in the above circumstance since contravention of the Rules and confirmation of demand under Section 11A has been established. The amounts are substantial & disallowance of credit illegibly taken with inadequate interest results in less revenue or violation of Rule 173Q. Casual denial is not called for.

(iv) It was observed by the lower authority found as follows on penalty - "As regards the composition of penalty, I find that assessee in their letter dated 18-9-99 stated & declared that they have been availing Modvat credit on all raw material including DMT towards clearance of method. It is also a fact that the assessee was working under physical control and the clearance were taking place after assessment in duty supervised by the C.EX. officer. Accordingly I conclude that the imposition of penalty on the assessee cannot be substantiated justified in the above circumstance." 5. There is no challenge or ground taken to impugn findings of the adjudicator as regards the assessee clearances being under physical control i.e. Chapter VIIA & thus Rule 173Q would not be applicable.

Therefore the plea made and the grounds for imposition of penalty under Rule 173Q cannot be upheld. Moreover we cannot uphold the levy of penalty merely on the grounds of substantial Revenue. As prescribed penalty is called for substantial intentional violation of the law & procedure & not the quantum or substantial amount of Revenue. Penalty under Revenue laws is not retributive in nature.

6. We find no merits in the grounds taken before us. Revenues appeal is therefore rejected.

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