

Abc Paper Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-08-2005

Judge : P Bajaj, M T K.C.

Appellant : Abc Paper

Respondent : Commissioner of Central Excise

Judgement :

2. The appellants have sought for waiver of the pre-deposit of the duty amount in dispute and the penalty, as detailed in the impugned order.

The duty amount has been confirmed against them by invoking the provisions of Rule 6(2) of the Cenvat Credit Rules, as the appellants allegedly, had failed to maintain separate records regarding the various inputs used by them in the manufacture of exempted as well as dutiable goods. The learned Counsel has contended that the appellants had been maintaining the records in respect of the inputs on which they had availed the credit and also in respect of other inputs on which they did not avail the credit. He had also contended that even on the inputs on which the appellants availed the credit initially, but after utilising the same in exempted goods, they have reversed the credit. On the other hand, the learned SDR has contended that in respect of some of the inputs the appellants did not maintain the separate records and subsequent reversal of the Modvat credit did not save them from the payment of 8% of the value of the clearances of the exempted goods under Rule 6 of the Cenvat Credit Rules, 2002.

3. We have gone through the impugned order and the provisions of Rules 6(2) and (3) of Credit Rules, 2002. The adjudicating authority in Para 13 of the impugned order has observed that there exists no Specific condition in Rule 6(2) of the Rules for keeping the separate stock/storage of common inputs to be used for manufacture of exempted goods and dutiable goods, but keeping of separate accounts is necessary. However, in the next Para 14, he has observed that at the time of personal hearing, the noticees produced copies of invoices under which the noticees had purchased inputs and in respect of which they had availed Cenvat credit and maintained separate accounts. He has also recorded that the scrutiny of the records and the reports from the field formation revealed that they were not keeping separate account in respect of some of inputs viz. felts, wires, oil and greases. But we find from the observations of the learned Commissioner in the very next para that the Asstt. Commissioner vide his report dated 12-1-2005 reported to him that the assessee was maintaining separate records of inputs used in the manufacture of exempted goods. It has also been mentioned by him (learned Commissioner) in this para that the assessee had been reversing the credit involved on that quantity of the inputs which were used in the exempted goods and on which they had initially taken the credit. These very observations have been made by him even in Para 17 of the order.

4. Therefore, keeping in view all the facts and circumstances and already reversal of the Modvat credit by the appellants in respect of the inputs, which had gone in the manufacture of the exempted goods, we find that they have a very strong case on merits. Therefore, stay application of the appellants is allowed. The appeal is to be posted for regular hearing in due course.

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