

Commissioner of Central Excise Vs. Marvel Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-03-2005

Judge : S T T.V.

Appellant : Commissioner of Central Excise

Respondent : Marvel Industries Ltd.

Judgement :

1. This is an appeal filed by the Revenue against Order-in-Appeal passed by the Commissioner (Appeals) in the case of M/s. Marvel Industries Ltd., who are engaged in the manufacture of HDPE bags, sacks, fabrics etc., availing Modvat credit on inputs. A Show Cause Notice was issued to them on 13-2-2002, demanding Rs. 6,90,486/- (Rupees Six Lakhs Ninety Thousand Four Hundred Eighty-Six only) for not reversing the Modvat credit of total inputs used in the manufacture of finished goods in relation to which they had claimed and obtained drawback.

2. The Original adjudicating authority not only confirmed this demand but also imposed penalty on them under Section 11AC, besides ordering recovery of interest under Section 11AB. Being aggrieved, the Respondents approached the Commissioner (A) who set aside penalty and interest contemplated in the Order-in-Original with the following observations : There are no provisions in the Modvat scheme for the reversal of the credit under the Central Excise Law for the purpose of availing of duty drawback These provisions are contained in the Duty Drawback Rules, In the absence of any specific provisions for the reversal of the credit under

Modvat scheme, it will not be just and fair to invoke the provisions of Section 11 AC for imposition of penalty.

3. The Id. Advocate reiterates that there are no provisions in Modvat scheme for the reversal of the credit under the Central Excise Law.

Even then, as a responsible tax-payer, they had reversed their credit, once they came to know of their liability. Thus, they had paid duty long before the issuance of the Show Cause Notice. The Id. Advocate refers the Tribunal's Order in , the case of Machine Montdl (I) Ltd., where the Larger Bench has held that no penalty can be imposed and no interest could be demanded under Section 11AC/11AB, where duty is paid by the assessee before issuance of the Show Cause Notice. According to him, it is clear now that once duty paid before issue of Show Cause Notice, no penalty can be imposed under Section 11AC of Central Excise Act, 1944 and no interest could be demanded under Section 11AB *ibid*.

4. The Id. SDK argues that the case-law produced by the respondent revolves around duty payment and not Modvat credit.

5. I have examined the case records and heard both sides. It is an admitted fact that there are no provisions under the Central Excise Law for reversal of the credit to facilitate availment of Duty Drawback. It is on record that the respondent had co-operated with the department and reversed the credit taken without even waiting for the issue of the Show Cause Notice, Following judicial discipline with reference to the decision of the Larger Bench cited in Para (3) above and also taking into consideration the ratio followed by the Commissioner (A) referred to in Para (2) above. I, hereby reject the appeal filed by the Revenue in toto.

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