

**Gkn Sinter Metals Ltd. Vs. Cce**

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

**Decided On :** Nov-07-2005

**Judge :** S T T.V.

**Appellant :** Gkn Sinter Metals Ltd.

**Respondent :** Cce

**Judgement :**

1. This is an appeal by M/s. G.K.N. Sinter Metals Ltd., the manufacturer of sintered products, against the Order of the Commissioner (Appeals), dated 26.2.2004.

2. The present case traces its origin to a show cause notice dated 24.3.2000, proposing to disallow the credit of duty of Rs. 9,50,108/- availed by them suo motu under Rule 57U besides contemplating penal action under Rule 173Q.3. In their reply they had stated that they did not raise any fresh credit in RG23C Part II but had only restored the credit after debiting equal amount of duty from RG23A Part II as suggested to them by the CERA audit party. A rectification was however made before issue of SCN.4. Dy. Commissioner of Central Excise who adjudicated the matter on 5.12.2001 allowed the credit but imposed a penalty of Rs. 50,000/-.

When they went in appeal before Commissioner (Appeals), the latter justified the penalty imposed by the Dy. Commissioner.

5. Being aggrieved, they have now knocked the doors of the Tribunal.

Their main contention is that they had followed the advice of CERA audit party. This Credit was taken without any permission/authorization from the concerned authorities and without the basis of any valid prescribed document for taking Modvat Credit. Thus the Credit of Rs. 9,15,108/- taken suo moto without any authorization is alleged to be illegal in the show cause notice issued to them. The learned Advocate has brought to my notice the following case law which indicate that if the assessee makes payment before issuance of show cause notice, in such cases no penalty could be imposed:- (i) - BPL Sanyo Utilities & Appliances Ltd. v. C.C., Bangalore Arun Prestressed Concrete Products P. Ltd. v. CCE, Bangalore The original Adjudicating Authority has observed in his Order that he finds no loss of government revenue in the instant transaction since the credit on Capital goods was earned by the assessee, but nevertheless he had imposed a penalty under Rule 173Q, while allowing the credit to the appellants.

6. Learned Jt. CDR insists that the penalty is imposable in this case and he reiterates the arguments of the original authority and the Appellate Authority.

7. I have examined the case record and heard both sides. It has not been questioned that there is revenue loss to the government, what has happened is just a technical lapse on the part of the tax payer, which cannot be taken too seriously by a benevolent tax-administration, as that of ours. I do not therefore find any point in taxing the already taxed with penal claws.. I, therefore, set aside the Order of the Commissioner (Appeals) as well as that of the original authority, allowing the consequential relief to the appellants.

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