

The Commissioner of Central Vs. Hydrogas Plg (i) Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-21-2005

Reported in : (2006)(105)ECC39

Judge : A Wadhwa

Appellant : The Commissioner of Central

Respondent : Hydrogas Plg (i) Pvt. Ltd.

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals), revenue has filed the present appeal. The short issue involved in the appeal Page 0041 is as to whether the process losses in respect of liquid carbon dioxide gas received by the respondents from their sister unit in tankers, while being transferred to cylinders should result in denial of modvat credit to such quantity of shortages.

2. After hearing both sides, I find that the issue stands decided by the Tribunal's decision in the case of HPCL v. Commissioner of Central Excise, Calcutta-I reported in 2001 (136) ELT 943 (Tri. Kolkata) holding that the wastage occurring from tank discharge through pipeline up to reaction kettle attributable to spillage, pipeline losses, handling losses, evaporation losses, etc. is covered by the provisions of Rule 57D of Central Excise Rules, 1944 and modvat credit cannot be denied to such quantity. I also take note of the Tribunal's decision in the case of Commissioner of Central Excise, Delhi-III v. I.P.F. Vikram India Ltd. reported in 2002 (150) ELT 175 (Tri.-Delhi), wherein it has been held that process of re-

packing the bulk detergent powder into small containers amounts to manufacture and, hence, credit on inputs gone waste during this process is not deniable.

3. The Commissioner has also relied upon both the Circular No.267/136/87-CX.8 dated 15/01/88 and has noted that the losses occurred during the storage, when pressure increases and the safety valves opens, at the time of opening and closing of pressure valves, while filling cylinders through liquid pumps, while filling cylinders due to intermediate pressure venting, losses due to defects in cylinder valves and also because of excess pressure, during the operation losses occurred while reverting the gas for recycling and liquefying. All the above losses have been rightly termed as process losses occurred during use of inputs in or in relation to the final products. As such keeping in view the peculiar nature of the commodity and process of manufacture and unavoidable and invisible loss, I fully agree with the reasoning of the Commissioner (Appeals) that modvat credit is not to be denied on such quantity of losses. In view of the above, the appeal filed by the revenue is rejected.

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