

**G and G Pharmaceuticals Vs. Cce**

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

**Decided On :** Feb-08-2007

**Reported in :** (2007)(117)ECC309

**Judge :** S Kang, Vice

**Appellant :** G and G Pharmaceuticals

**Respondent :** Cce

**Judgement :**

1. The appellant filed this appeal on the ground that modvat credit was denied and penalty was imposed on the ground that appellants had availed the credit without filing declaration under Rule 57-H of Central Excise Rules and adjudicating authority wrongly condoned the delay in filing the declaration under Rule 57-H of the Rules.

2. The brief facts of the case are that the appellants are engaged in the manufacture of medicines and for availing the credit in respect of inputs used in the manufacture of final product, the appellants filed necessary declaration under Rule 57-G of Central Excise Rules, on 15.9.98 along with application for condoning the delay. The delay was condoned. Thereafter, the appellant also filed a declaration under Rule 57-H on 13.1.1999 in respect of the duty paid on the inputs lying in stock. Thereafter credit was taken on 11.3.1999.

3. A show cause notice was issued for denial of this credit. The adjudicating authority dropped the proceedings on appeal filed by the Revenue denied the credit on the ground that there was no provision under Rule 57-H to condone the delay in filing the declaration and declaration is to be filed prior to taking credit so that Revenue can verify the inputs lying in stock.

4. The contention of appellant is that show cause notice was issued for denial of credit on the ground that claim of the appellant is not admissible as the provisions of Rule 57-H provides that claim of credit in respect of the goods lying in stock is maintainable in case declaration under Rule 57-G has been filed. It is also alleged in the show cause notice that declaration under Rule 57-H was filed on 13.1.1999 in respect of the inputs lying in stock on 25.8.98.

5. The contention is that as per the provisions of Rule 57-H, the manufacturer who intend to avail credit immediately upon obtaining declaration made under Rule 57-G, shall file a declaration under this sub-rule. The contention is that appellants once take credit on input lying in stock when they opt for modvat scheme and it is not the case of Revenue that credit was taken prior to filing the declaration under Rule 57-H. The appellant also submitted that Revenue is not disputing duty payment on goods lying in stock or quantity mentioned in the declaration. The credit is being denied on the ground that it was filed late and there is no provision for condoning the delay. Therefore, the demand is not sustainable.

6. The contention of the Revenue is that at the time of opting for the modvat scheme the appellant filed declaration under Rule 57-G for taking credit used in the manufacture of final product and thereafter filed a declaration under Rule 57-H subsequently in respect of the inputs lying in stock. The applicant wants to avail the credit on inputs lying in stock as on 25th August, 1998 whereas the declaration was filed on 13.1.1999. Credit was rightly denied.

7. In this case the dispute is regarding credit on inputs lying in stock at the time of appellants opted for modvat scheme. Rule 57-H provides that a manufacturer can take credit in respect of inputs lying in stock after filing necessary declaration. For ready reference, Rule 57-H is reproduced below: Rule 57H. Transitional provisions - (1) Notwithstanding anything contained in Rule 57-G, a manufacturer intending to

avail of [credit of duty paid on inputs received by him] immediately before obtaining the dated acknowledgement of the declaration made under that rule, shall file a declaration under this sub-rule with the jurisdictional Assistant Commissioner of central excise stating that- a) such inputs are lying in stock, or are received in the factory after filing the declaration made under Rule 57G; or b) such inputs are used in the manufacture of final products which are cleared from the factory after filing the declaration made under Rule 57G, and that no credit has been taken by the manufacturer in respect of such inputs under any other rule or notification.

c) The credit under Sub-rule (1) shall not be available in case the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty.

In the present case, the appellant filed declaration before taking credit in respect of the credit on the inputs lying in stock. The Revenue is not disputing the duty payment on the quantity of the stock mentioned in the declaration. Rule 57-H provides that after filing declaration under Rule 57G, a manufacturer can ask for credit in respect of input lying in stock after filing necessary declaration. As the appellant has filed necessary declaration in respect of the inputs lying in stock, there is no question of any delay in filing the declaration. As the quantity mentioned in the declaration and duty payment is not disputed and appellant had availed the credit after filing the declaration under Rule 57-H, the impugned order is not sustainable and is set aside. The appeal is allowed.

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