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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-26-2007

Reported in : (2007)(119)ECC378

Judge : S Kang, Vice, N T C.N.B.

Appellant : Cepharm Laboratories Ltd., Mr.

Respondent : Cce

Judgement :

1. The issue arising in these appeals is connected. Accordingly, they are being heard together and disposed of by this common order.
2. Appellant M/s Cepharm Organics are manufacturers of (i) Ampicillin Trihydrate/Anhydrous IPBP, (ii) Amoxycillin Trihydrate IP/BP and (iii) Cloxacillin Sodium IPBP. These drugs are subject to Central Excise duty. The inputs going into their production are also eligible for credit (MODVAT) of Central Excise duty paid on them.
3. During the period April, 1993 to July, 1997, the appellants received inputs like Pencillin-G, Menthaoil, HCL, Ammonia Gas, Methalene Chloride and Toluene and took credit of duty paid on them. These inputs are to be first converted into an intermediate product, 6 APA. M/s Cepharm Organics does not undertake this conversion of the inputs into 6 APA for some technical reasons like the danger of contamination of other products manufactured in the factory. The inputs are

therefore, transferred to the other appellant, namely M/s Cepham Laboratories Ltd. That appellant converted the inputs into 6 APA and sent the 6 APA back to M/s Cepham Organics. Thereupon, the intermediate product was used in the manufacture of the above mentioned drugs which were cleared on payment of duty. It may be noted at this stage that both the appellant manufacturers are located in the same premises. Another relevant fact to be noted here is that M/s Cepham Laboratories undertakes the manufacture of 6 APA for other bulk drug manufacturers also.

4. The manufacture of 6 APA by M/s Cepham Laboratories is clearly a job work. No duty was paid by M/s Cepham Laboratories in regard to the job work done by it to its customers since the customers were using the 6 APA for further manufacture and the resultant final products were cleared upon payment of duty. Such movement of inputs to a job worker and return of manufactured goods without payment of duty to the supplier of the inputs is specifically permitted under Rule 57-F of Central Excise Rules.

5. However, duty demand has been raised in the present case in regard to 6 APA manufactured by M/s Cepham Laboratories because the appellant had not followed the procedure prescribed under Rule 57-F. Similarly, modvat credit taken by M/s Cepham Organics on inputs which were sent for the manufacture of 6 APA to M/s Cepham Laboratories has been denied for the sole reason that Rule 57-F procedure was not followed. The orders also treated the appellant's action as a violation of Notification No. 214/86.

6. While the disputes are for the period 1993 to 1997, show cause notices were issued only in March, 1998. These notices invoked the extended period of five years permitted under the proviso to Section 11A of Central Excise Act, 1944.

7. The submission of the learned Senior Counsel for the appellants is that these are not cases involving fraud, suppression of facts, etc.

mentioned as the special circumstances for issuing delayed show cause notices. According to the learned Counsel, the demand has to be quashed on the ground of limitation alone. The contention of the Counsel is that no notice was warranted

as there is no duty evasion and all that was involved was variation in the procedure and documentation followed by the assessees.

8. According to him, the only requirement is that the movement of inputs to job worker and receipt back of the intermediate products should be accounted by the assessee. It is being pointed out in this connection that since the demands have been worked out from the appellants own accounts, there could be no allegation of any unauthorized diversion of inputs. The learned Counsel would emphasise that it is settled that extended period for demand would be available only in cases where the assessee, with intent to evade duty, commits fraud, wilful suppression of material facts etc.

9. It is also the contention of the learned Counsel that since for many other assesses also, M/s Cepham Laboratories is doing the same job work of conversion of free supply inputs into the same intermediate product (6APA) without payment of any duty, the same job work for M/s Cepham Organics cannot be treated as with intent to evade payment of duty. It is also being emphasized that both the appellants did not stand to gain from a violation of rules of procedure as the excise scheme is either to grant exemption to intermediate products or to grant back to back modvat credit. The contention of the learned Counsel is that the case is revenue neutral and in such a case, allegation of willful intent to evade duty cannot be raised.

10. The learned Jt CDR would point out that the requirements under Notification No. 214/86 and Rule 57F have not been satisfied and therefore, demands are fully justified. According to him, suppression of facts is clearly involved in as much as the appellants had not disclosed to the revenue authorities that the modvatted inputs were being sent out to another factory for conversion to 6 APA.11. We have perused the record and carefully weighed the contentions raised by both sides. The record shows that dispatch of inputs by appellant M/s Cepham Organics to M/s Cepham Laboratories, conversion of these inputs by the latter to 6 APA and return of 6 APA to the former were being fully reflected in the books of accounts of both parties.

Thus, there was nothing clandestine or unaccounted about the transactions. Relevant Rules specifically permitted such movements.

Further, M/s Cepham Organics could have sent the inputs alongwith the modvat credit to M/s Cepham Laboratories and that assessee could have taken the credit so transferred and used for payment of duty on 6 APA. Similarly, upon receipt of duty paid 6 APA, M/s Cepham Organics could have taken the duty paid on 6 APA as modvat credit and utilized that credit for paying duty on the bulk drugs. Both procedures would not yield any duty to revenue. This is further made clear by the fact that M/s Cepham Laboratories were undertaking the same job work for other parties also without payment of duty and no demand has been raised in those cases. The only reason for raising demands against the present appellants that prescribed procured has not been followed.

12. That brings us to the question whether the law permits delayed demand in a revenue neutral case. It is well settled that demand under proviso to Section 11A could be raised only in exceptional cases. Those exceptions are mentioned in the proviso itself. They are fraud, willful suppression of facts or misstatement of facts with intent to evade duty, etc. In the present case, as already noted, the transactions were fully recorded in the books of accounts of both the assesses, though not as prescribed in the rules. The situation also is revenue neutral.

In such a case, non-disclosure of the transactions to revenue cannot rightly be construed as resulting from intent to evade duty. After all, there was no duty to be evaded. We, therefore, accept the contention of the appellants that the demands are hit by limitation.

13. It is well settled that penalties cannot survive in the absence of duty demands. Therefore, penalties are also required to be quashed.

14. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, to the appellants.