

Collector of Central Excise Vs. thermax Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-25-1993

Reported in : (1994)(74)ELT891Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : thermax Ltd.

Judgement :

1. The Reference Application has been moved by the Revenue and there is a delay of 8 days in riling the reference application. After hearing both the sides, we condoned the delay and took up the reference application for consideration on merits.

2. The Reference application is in respect of this Bench Order No.742/93-WRB, dated 25-5-1993, whereunder, the respondents were allowed the modvat credit, which was sought to be denied by the lower authorities. In the aforesaid order, we observed that there was a deliberate violation of the provisions of the Modvat Rules in storing the modvat inputs in the unlicenced premises and their utilisation in their final products which were cleared from the unlicenced premises, on account of which a penalty of Rs. 5 lakhs was sustained. A cross-objection has also been filed, which is to be considered as a reference application, suggesting reference of certain questions on the point of imposition of penalty. The questions framed by the revenue are as below: (i) Whether notwithstanding the provisions of Rule 57G(2) of the Central Excise Rules, 1944, an assessee can be extended the benefit of MODVAT credit on inputs on the basis of a declaration for manufacturing

activity in specified licenced/registered factory without bringing the inputs in the factory; (ii) Whether notwithstanding the provisions of Rule 57G(1) an assessee can be extended the MODVAT credit on inputs received in unlicensed premises for manufacture of some final products when no.

valid declaration in respect of inputs received in such premises is filed.

(iii) Whether it would be legal and proper to take a broader view of the MODVAT scheme and extend the benefit of MODVAT credit on inputs if assessee pays duty on the final product manufactured therefrom even though there is non-compliance of the MODVAT Rules, especially the Rules 57G and 57F and conscious contravention of provisions of Rules 174,9 and 49 is established.

(1) Whether in the facts and circumstances of the case the Appellate Tribunal was right in imposing a penalty of Rs. 5 lakhs on the company? (2) Whether in the facts and circumstances the Appellate Tribunal was right in observing that under Rule 173Q(1)(b)(a) penalty can be imposed on any person who contravenes the provisions of Section AA of Chapter V of the Rules irrespective of whether such contravention leads to evasion of duty or otherwise? (3) Whether the Appellate Tribunal was right in holding that there is a clear and knowing contravention of manufacture, storage and removal of excisable goods from unlicensed premises particularly since the Central Excise law procedures have been followed otherwise at the Chinchwad factory? (4) Whether the Appellate Tribunal was right in observing that there was an overt attempt to show that the goods which are manufactured in unlicensed premises were done in the licensed premises by making gate entries in the Chinchwad factory in the absence of any material whatsoever, since undisputedly the gate entries in the Chinchwad factory were part of the private records of the company which were of the nature never to be looked into by the Excise and hence entries therein could not have been made with an attempt to deceive Central Excise Department.

(5) Whether the Appellate Tribunal was correct in referring to the letter dated 22-8-1983 for the purpose of imposing penalty when that letter was written much prior to March 1986 when MOD VAT scheme was not even in force and when otherwise also actually no manufacturing activity was undertaken in that premises and hence

the declaration in that letter was in any case not false nor incorrect?" 4. Heard both the sides. The factual position is not disputed by either side. The Respondents brought the declared inputs and utilised them in the manufacture of their declared final product, but all these activities were stated to have been carried out in a premises 500 yards away from the licensed factory. The Respondents have earlier intimated to the Department for storing the goods in their premises for operating under Rule 56C of the Central Excise Rules. Subsequently, when the modvat scheme was introduced, they continued to receive the inputs and despatched the goods to various job workers, after taking the modvat credit in their main licensed factory and when these goods were received back from the job workers, after packing and testing, they were cleared from the unlicensed premises. However, the debits of duty both into PLA as well as in the Modvat Account were made in the registers maintained at the main licensed factory. The Department sought to deny the modvat credit, while accepting the duty payment from the PLA on the ground that the declaration did not cover the premises situated 500 yards away from the unit. This Bench took into account the peculiar circumstances of this case and held that so long as there was no dispute that the declared inputs had been utilised in the declared final product and they had been treated as the manufacturers of these goods for purpose of both the duty payment as well as for accepting the modvat declaration, the aforesaid violation was more of procedural nature and there had been a substantive compliance of the provisions of Rule 57G not warranting denial of modvat benefit, especially in the context of the objection behind in the modvat scheme.

5. Under Rule 57G, a declaration is necessary in respect of the inputs for utilisation against the final product. The question of taking out a licence is only a procedural requirement. Even if the manufacturing activity has been carried out in an unlicensed premises and they are cleared without payment of duty, the assessee cannot escape payment of duty on the ground that they have not been licensed. Hence, when the duty liability arises on the manufacture of the goods, which admittedly has taken place in the said premises and when they are cleared from those premises, they are to pay duty at which point of time if it could be established that the duty paid inputs have been utilised and the modvat credit in respect of the duty paid such inputs could be ascertained, that credit cannot be

denied. This is the substantive requirement of the entire scheme. Here, a declaration under Rule 57G for the inputs and the final products has been given and the very same inputs have been used in the declared products. The only lapse is that such receipt and utilisation have taken place in a premises 500 yards away from the licensed premises. Hence, the questions as framed by the Revenue cannot be answered in a general manner. Allowing the modvat benefit in this case is only on account of these undisputed circumstances and hence, the questions as framed by the Revenue do not raise a point of law. The substantive compliance with the provisions of Rule 57G are to be held in the circumstances discussed. Hence, we are not inclined to refer these questions proposed by the Revenue.

6. As regards the questions framed in the cross-objection, there is no dispute that the respondents are the established manufacturers and they are admittedly well-versed with provisions of the Central Excise Law.

They did not include the premises, where manufacturing activity has reportedly taken place and brought modvat inputs in such premises.

There is likelihood of potential danger to revenue in receiving modvat inputs in the premises not under licensing control. On a specific question put to Shri Madhav Rao as to whether Rule 173Q permits imposition of penalty for violation of the Modvat Rules, he agrees to this position but contends that when there is no duty evasion, there cannot be any mens rea and hence penalty cannot be imposed. We, however, could not agree with him for the reasons recorded in the order. Even the Apex Court have held that where there is a violation of the Rules irrespective of mens rea, penalty can be justified. The question of imposition of penalty and the quantum thereof is a matter to be decided purely based on the facts of each case and the attendant circumstances. Here, when an established manufacturer completely disregarded the provisions of law, which might lead to a potential evasion, penalty is justified. Hence, both the Reference Application as well as the cross-objections are dismissed.