

Shetron Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-09-1996

Reported in : (1996)LC63Tri(Mum.)bai

Appellant : Shetron Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. For hearing the appellants Appeal on merits, they are required to deposit a sum of Rs. 6,88,176.86, and the penalty amount of Rs. 15,000/-. The appellants submit that they have already deposited the penalty amount and the stay sought for is only in relation to the duty demanded.

2. Mr. M.H. Patil, the Ld. Advocate appearing for the appellants submits that there are two companies which have common Directors and virtually work like sister concern. One Company imported certain items which were diverted to the present appellant and based on the documents in favour of the said Company namely M/s. Fibre Foils Ltd., they availed of modvat credit, but it was subsequently realized that documents being not in the name of the appellant, they could not have availed of the modvat credit, and hence they sent back the goods by issuance of gate passes on payment of appropriate duty, to the extent of the credit availed of by them, and thus, virtually reverse in Modvat credit which was availed of, After this was done, the Show Cause Notice was issued and demand has been confirmed along with imposition of personal penalty. In his submission the only ground on which the demand has been confirmed is that the appellants ought to have

reversed the modvat credit and instead they have utilized the same Modvat credit for the purpose [of] paying the duty on the goods returned by them to their another concerned. In his submission the amount has virtually been reversed and there is no cause for raising the demand.

3. Shri Gurdeep Singh, the Ld. JDR, however, submits that the issue of availment of modvat credit and hereby removing the goods to their another concerned under duty paying document tantamount to utilizing of the Modvat credit, which has been wrongly availed of by them and hence, the demand is sustainable.

4. Considering the submissions the issue is debatable and prima facie arguable in favour of the appellants, and hence stay against recovery and waiver against pre-deposit of the amount is granted.

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