

## Commissioner of Central Excise, Cal-II Vs Modern Malleable Ltd.

**Court:** Calcutta High Court

**Date of Decision:** June 29, 2010

**Citation:** (2010) 3 CALLT 224

**Hon'ble Judges:** Sengupta, J; Kanchan Chakraborty, J

**Bench:** Division Bench

### Judgement

Sengupta and Kanchan Chakraborty, JJ.

This reference has been at the instance of the revenue on the points formulated by the learned

Tribunal as per direction of this Court's Order dated 30th July, 2002, as follows:

(i) Whether credit of duty can be availed of under Rule 57A when the input manufacturer has not paid the duty?

(ii) Whether the respondent was under an obligation under Rule 57(C)(2) to take all reasonable steps to ensure whether the duty on inputs

acquired by them had been paid?

(iii) In case of duty on inputs was unpaid whether the respondent is liable for payment of the whole duty ?

(iv) Whether the remedy of the respondent in the case referred to in (iii) is only by way of recovery of the duty unpaid in respect of inputs from the

Input Manufacturer ?

2. Before we proceed to give answers to the questions referred to above, we, feel mentioning of the facts will be useful. The admitted facts are as

follows:

The assessee/respondent was served with a show cause notice alleging that they have utilized MODVAT credit to the extent of Rs. 1,56,409.00

during the period from 14th March, 1996 to 23rd March, 1996 on account of procurement of inputs against improper invoices issued by one M/s.

Supreme, Motprods Ltd., Jaipur, who allegedly enhanced their credit balance and cleared the inputs by debiting, such enhanced credit balance.

Undisputedly the assessee/respondent is entitled to MODVAT Credit. It is alleged that the assessee/respondent did not take any reasonable steps

to ensure whether the inputs supplier, i.e. M/s. Supreme Motprods Ltd., had actually paid duty as per Rule 57G(ii) or whether they issued the

documents fraudulently without being sufficient balance in their credit.

3. The cause was shown to the said notice explaining their position that they procured the materials from the aforesaid inputs manufacturer and it

has been specifically mentioned in the invoices that they are entitled to the amount of MODVAT credit. So. the said amount was debited. After

procurement of invoices the input material was produced before the jurisdictional central excise officer for examinations and on examining the

same, the officer concerned defaced the same.

4. Not being satisfied with the explanation, the appropriate authority not only demanded payment of the said excess amount of duty which was

really payable by the input manufacturer, but also imposed penalty. To put it simply, the fault of the input manufacturer has been attributed to the

assessee/respondent.

5. The whole question upon interpreting the last proviso of Rule 57G of Central Excise Rules, 1944, the Court has to find as to what should be the

reasonable steps on this given facts and circumstances to ensure that inputs acquired by him are goods on which appropriate duty has been paid.

Therefore, we set out the said proviso:

Provided also that the manufacturer shall take all reasonable steps to ensure that the inputs acquired by him are goods on which the appropriate

duty as indicated in the documents accompanying the goods, on which the appropriate duty as indicated in the documents accompanying the

goods, has been paid.

6. According to us, no hard and fast rule can be laid down as to which should be the reasonable steps to ensure payment of duty of the inputs.

According to us, a manufacturer has to examine first from the invoices and documents whether any declaration has been made as to payment of

duty already made or not and secondly, whether inputs manufacturer is enjoying any MODVAT credit or not, and if so, then whether any

declaration of such credit and corresponding debit has been made in the invoices or not.

7. If the declaration is made and if the material is produced before the appropriate officer, who on examination of the same defaces and clears it,

we think that duty as provided in the appropriate proviso of the Rule 57G of Central Excise Rules, 1944, is discharged. If the aforesaid minimum

step is not taken by the manufacturer then certainly the aforesaid mischief as construed in the proviso will be applicable.

8. The learned Tribunal has correctly found the aforesaid positions. Therefore, we are of the view the first authority as well as the appellate

authority have not taken correct views and th overruled rightly by the learned Tribunal.

9. Over and above, the said Rule and Act no where provide in case of failure to take appropriate steps then the manufacturer, namely, the

recipient of the inputs is liable to pay the amount of alleged debit tax. If there is no authorisation under the rule or to put in a different way, no

obligation to pay under these circumstances like provision of Income Tax Act in case of default in collection of tax at source, the payer is treated to

be a deemed assessee. It is, however, not a bona fide action on the part of the respondent authority when no action has been taken against the

manufacturer of inputs for alleged use of excess amount of MODVAT credit.

10. Therefore, the whole action taken by the authority concerned is presumed to be baseless.

11. Under these circumstances, we are unable to accept the contentions Mr. Bose that the respondent dealer is under obligation under the facts

and circumstances to pay the alleged duty and the penalty amount, Accordingly. we answer the questions in the manner as follows:

(i) In the affirmative.

(ii) In the affirmative.

(iii) In the negative, and

(iv) In the affirmative, of course within the period of limitation as provided under the law.

12. We make it clear that in case of any period of limitation is involved for recovery of alleged excess amount of MODVAT credit, the time during

which the proceeding is pending before this Court, should be excluded.

13. The appeal is, accordingly, disposed of without any order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.