

**M.P. Electricity Board Vs. Cc**

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

**Decided On :** Aug-25-1998

**Reported in :** (1999)(80)LC692Tri(Mum.)bai

**Judge :** R T Lajja, S Kang

**Appellant :** M.P. Electricity Board

**Respondent :** Cc

**Judgement :**

1. The appellant filed this appeal against the order in appeal dated 10.2.1993 passed by the Collector of Customs (Appeals) Bombay.
2. In this case the refund claim of Rs. 39,424/- filed by the appellant was rejected.
3. Brief facts of the case are that appellant made an import of consignment of spare parts of Hydrogen Compressor for power house. The appellant filed the bill of entry and the same was assessed and duty amounting to Rs. 9,12,485/- was paid by the appellant. Thereafter the appellant filed the refund claim of Rs. 39,424/- on the ground that item No. 44 of the invoice has not been received by the appellant and the same was short shipped. The adjudicating authority rejected the refund claim. Thereafter the appellant filed the appeal and the same was rejected.
4. Ld. counsel appearing for the appellant submits that the goods were found short when the goods were examined at the site. He submits that thereafter the supplier

supplied the goods short supplied free of cost.

He therefore prays that the appeal be allowed.

6. The contention of the appellant is that goods were short shipped and the supplier had supplied the goods free of cost. Hence the refund be allowed.

7. When the appellant filed the bill of entry, the goods were examined and no shortage in respect of the goods imported were noticed by the appellant. The appellant have not produced any examination certificate or survey certificate in support of his claim that the goods were short shipped. The appellant relied upon the invoices issued by the supplier where it is shown that goods were supplied free of charge and in this invoice, the goods were described as "After cooler coil assembly." The appellant has not produced any evidence on record to correlate the goods received free of charge with the goods alleged to have been short shipped relating to which refund claim has been filed. In the impugned order, the Collector of Customs held as under: 8. There is no doubt whatsoever, that the Appellant, did not have the goods surveyed, or checked prior to clearance and customs out of charge, otherwise the shortage, would have come to notice, and the survey would have been conducted, in the presence of Customs authorities, and thereby the Appellant, would have become entitled to claim abatement of duty, against goods short shipped. However, since the shortage was noticed only after the Appellants, cleared the goods out of customs charge, I am afraid the shortage noticed by them, in their own premises, cannot be taken cognisance of, as correctly adjudged by the Lower Authority.

8. In view of the fact that appellant has not produced any evidence in support of their refund claim, we do not find any infirmity in the impugned order. The appeal filed by the appellant is dismissed.

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