

**M/S. Devidayal Industries Ltd and Vs. Commissioner of Customs (Export)**

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

**Decided On :** May-28-2001

**Appellant :** M/S. Devidayal Industries Ltd and

**Respondent :** Commissioner of Customs (Export)

**Judgement :**

1. On hearing both sides on the stay application, it appeared that the main appeal itself could be taken up for disposal. This was done by granting waiver of predeposit of duty of Rs.6,40,170/- and penalty of Rs.30,000/-.

2. The duty was confirmed and the penalty was imposed by the Commissioner in the belief that the appellants had contravened the provisions of Notification No. 203/92 Cus inasmuch as in the production of export goods modvat credit had been availed of. The appellants raised the following contentions:- [1] Being transferee license holders they are not liable for the alleged frauds of the transferer.

[2] They are in a possession of the certificates of reversal of the excise duty.

3. In dealing with an identical case reported in 1999 (112) ELT 835 (Tribunal) [Dabur India Limited Vs. Commissioner of Central Excise,] the Tribunal had held that where extended period is invoked under Section 28(1) of the Act, it had to be shown that the fraud, misrepresentation etc. had been made by the importer with intent to defraud. In the case of transfer of licensee the transferer and therefore the extended period could not be invoked against the transferee licence holder. But in this case we would rather that the Commissioner examine the evidence that

the modvat credit taken was reversed.

4. The appeal is allowed. The proceedings are remanded back to the jurisdictional Commissioner. He will examine the evidence of reversal put forth by the present appellants. He shall also take into account the judgement referred to above and give a considered judgement.

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