

**innovative Tech Pack Ltd. Vs. Cce**

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

**Decided On :** Apr-15-2002

**Reported in :** (2002)(82)ECC648

**Judge :** S Kang, a T V.K.

**Appellant :** innovative Tech Pack Ltd.

**Respondent :** Cce

**Judgement :**

1. Appellants filed this appeal against the adjudication order passed by the Commissioner of Central Excise. The Commissioner of Central Excise in the impugned order denied the benefit of Notification No.5/99-CE dated 28.2.1999, demanded duty and imposed penalty. The penalty of Rs. 17,932 was also imposed in respect of shortage of finished products. The duty in respect of shortage of finished product was deposited during the pendency of the adjudicating proceeding.

3. The appellants are not contesting demand and the imposition of penalty in respect of the goods found short in the factory.

4. Appellants are only challenging the denial of the benefit of Notification No. 5/99-CE dated 28.2.1999.

5. The contention of the appellant is that they had two factories manufacturing plastic bottles and Jars falling under Sub-heading 3923.90 of Central Excise Tariff.

The one factory is located at 33 Roz-Ka-Meo, Industrial Area, Sohna Distt. Gurgaon and the appellants were availing the benefit of Notification No. 5/99-CE dated 28.2.1999 in respect of the goods manufactured from this factory. The other factory is situated at 51, Roz-Ka-Meo, Industrial Area, Sohna Distt.

Gurgaon. The appellants are clearing the goods on payment of full tariff rate and were availing benefit of Modvat Credit of the duty paid of the inputs received in this factory. The benefit of the Notification was denied to the appellant on the ground that the appellants were availing the benefit of Modvat credit in respect of the inputs in the factory at 51, Roz-Ka-Meo, Industrial Area, Sohna Dist: Gurgaon. The contention of the appellant is that the condition in the notification is in respect of the goods manufactured in the factory, whereas the Commissioner in the order held that exemption is available to the manufacturer and not to the goods as the appellants are manufacturing same goods in both the Units and in one Unit, they are availing the Modvat credit. Therefore, the exemption is not available to the second Unit. The contention of the appellant is that in the Unit where the benefit of notification is being availed, the appellants are not taking any Modvat credit in respect of any other product. Therefore, the appellants are entitled for the benefit of the notification. Appellants are also relied upon the decision of the Tribunal in the case of N.M.Nagpal (P) Ltd. v. CCE.6. The contention of the Revenue is that the condition of the notification is such that if a manufacturer avails the credit of duty in respect of the specified goods, the manufacturer is not entitled for the benefit of notification. As the appellants were availing the benefit of Modvat credit in respect of inputs used in one factory, therefore, the appellants are debarred for availing the benefit of notification.

7. For ready reference the condition No. 10 of the Notification No.5/99-CE dated 28.2.2002 which is under consideration is reproduced below: If the manufacturer does not avail of credit of duty paid under Rule 57A or 57B on the products mentioned in column (2) of the said Table or on any other product manufactured in the same factory.

8. Reading of the above condition provides that if the manufacturer has not availed the Modvat credit in respect of the duty paid of inputs in respect of the goods

mentioned in Column No. 2 or any other product manufactured in the same factory benefit of notification is available in respect of the specified goods. The intention of the notification is to put restriction on the manufacturer not to avail the credit of duty on the product in respect of which the exemption is availed or on any other product manufactured in the same factory. The condition No. 10 of the notification does not mention that the manufacturer could not avail the Modvat Credit in all the factories under him. The Tribunal in the case of N.M. Nagpal (P) Ltd. v. CCE, Delhi 2000 (41) RLT 389 (CEGAT) held that under condition No. 10 of the Notification No. 5/99-CE dated 28.2.2002 prohibits taking of credit on inputs manufactured in the same factory and not taking of credit in respect of other final products manufactured in the same factory. In view of above discussion the Appellants are entitled for the benefit of the Notification No. 5/99-CE dated 28.2.2002 in respect of the specified goods manufactured in their factory at 33, Roz-Ka-Meo, Industrial Area, Sohna, Gurgaon. The demand confirmed after denying the benefit of notification and the equal amount of penalty imposed on the appellant in respect of this notification is set aside. The appeal is disposed of as indicated above.

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