# Cce Vs. Lamina International

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**SooperKanoon Citation** : sooperkanoon.com/28690

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

**Decided On :** Aug-09-2002

**Reported in** : (2002)(105)LC51Tri(Bang.)alore

**Judge** : G B Deva, S T S.S.

**Appellant** : Cce

**Respondent** : Lamina International

**Judgement** :

1. Revenue has filed this appeal against the Order of Commissioner (Appeals) who is said to have heard in setting aside the rejection of the refund claim filed by the respondents and holding that the assessee is an export organisation operating under Notfn. 27/92 dtd. 10.7.1992, which is known to the Department, even when the goods were manufactured by M/s. Lamina Suspension Products who availed modvat credit. The Commissioner also held that the respondents were constructively the manufacturers of the exported goods. It has also been submitted in the appeal before us that the Commissioner (Appeals) has failed to take notes of the contents of Rule 57F(4) of the Central Excise Rules, 1944 which allow the manufacturer to obtain the benefits there under for goods exported under bond and not to a merchant exporter as held by the Commissioner (Appeals).

a) The reliance of the respondents of Notfn. No. 27/92-CE(NT) dtd.

9.10.1992 which provides a person who actually manufactures or fabricates exigible goods should comply with the procedural formalities under the Act and the 'Merchant exporters' could be treated as deemed manufacturers under the provision of the said Notification and are exempted from the Registration under Rule 174 of the Central Excise Rules, 1944. The acknowledgment of a merchant exporter communicated by the Department under the provisions of Notfn. No. 27/92 could be only to consider them as 'deemed manufacturers' only for the purposes of Rule 174 of Central Excise Rules, 1944. The fiction of law of 'deemed manufacturers' cannot be extended to them under Rule 57F(4), to consider them to be manufacturers. Under Rule 57F(4), it is only manufacturer, who availed the benefit of the modvat credit, who is entitled to the refund of the unutilised portion of such modvat credit lying in his books unutilised as per the Notification issued. Therefore, we cannot uphold the Commissioner (Appeals) orders granting such refunds to an entity other than one who availed the credit and find force in Revenue's appeal.

b) The respondent's reliance on CBEC Circulars 604/41/2001-CX dtd.

29.11.2001, 602/39/2001-CX dtd. 21.11.2001, 164/75/95-CX dtd.

18.12.1995 and'428/61/98-CX dtd. 2.11.1998 which are granting the eligibility of Rebate of duty on goods exported cannot be extended to cover the Refund of Modvat Credit unutilised in the books. The Refund Modvat Credit amounts unutilised in the RG23A and other books, is sui generis and cannot be equated with duty on inputs or the final products which are granted as Rebates under the Central Excise Rules on goods exported. The modvat amounts of credit, is a pool available and can be granted as refund under Rule 57F(4) subject to the condition that such amounts are rendered surplus due to export of the final end product and cannot be used by the modvat availer for other purposes permitted under law.

CCE, New Delhi v. Bhayana Electronics Industries Pvt. Ltd. are only supporting the interpretation that modvat credit amount refunds under Rule 57F(4), cannot be denied when merchant exporters have made the exports. These cases nowhere lay down that such a refund could be granted to a 'merchant exporter.' We therefore do not find the same to assist upholding the grant of the refund in this case to a merchant exporter. As regards the case of Alpha Garments relied upon by the respondents, we find that, that was a case of grant of Rebate under Rules 12 and 13 and not of modvat credit amount unutilised in the books. Since we find the Rebate and modvat credit un-utilised in the books eligible for the refund are two separate is sues, we cannot rely on this case law submitted by the respondents to sustain the orders of Commissioner (Appeals).

3. We therefore find force in the appeal filed by the Revenue and allow the same and order that Order-in-Appeal No. 1064/99-CE dtd. 27.7.1999 allowing the refund of Rs. 9,25,925/- is set aside and the orders of the Assistant Collector, Mangalore are restored. The appeal is allowed.