# Bell Ceramics Ltd. Vs. Commissioner of Cus. and C. Excise

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**SooperKanoon Citation** : sooperkanoon.com/28993

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

**Decided On :** Sep-27-2002

**Reported in** : (2003)(153)ELT333Tri(Mum.)bai

**Judge** : J Balasundaram, J T J.H.

**Appellant** : Bell Ceramics Ltd.

**Respondent** : Commissioner of Cus. and C. Excise

**Judgement** :

1. On hearing both sides on the application for waiver of pre-deposit of duty amounting to Rs. 18/73,058/- we find that the issue being capable of being decided at this stage, the appeal itself could be disposed off. Both sides agreeing, this was done.

2. The facts of this case deserve to be noted. The appellants had received certain inputs during the period November, 1991 to March, 1994 without duty having been paid thereupon. On the dutiability of the inputs there was a dispute. This was later settled requiring the manufacturers to pay duty. The supplier-manufacturer paid duty sometime in 1996 and requested for a certificate under the then Rule 57E of the Central Excise Rules, 1944. This rule made for the variation in credit.

Where any additional quantum of duty was later paid by the manufacturer such a certificate would enable the receiver-manufacturer to claim increment in credit. Conversely, where any refund had been obtained by the supplier-manufacturer the certificate would make the recipient manufacturer to reverse equivalent amount of credit availed. There was considerable dispute in granting of this certificate. The Commissioner (Appeals) in July, 1999 ruled that it be given. The certificate was given in the year 2000 and became the basis of the claim of incremental credit taken by the recipient-manufacturers who are the appellants before us in this case.

3. The relevant Central Excise Rules in the meanwhile had undergone a drastic change. Under the new rules the certificate was not found to be a valid document by the Assistant Commissioner. Therefore he found himself "constrainted to disallow the credit taken" as he had no authority to go beyond the provisions of the Rules.

4. The Commissioner (Appeals) voiced the same sentiments. Accepting that credit was legally due to the respondent, he upheld the denial. He held that the assessees were entitled to get a suitable certificate and directed the jurisdictional authorities and the supplier-manufacturer to issue such certificate. The present appeal is against this order.

5. We find that in this entire proceedings all concerned authorities (as also the assessees) have lost sight of Section 38A of the Central Excise Act. This section is a saving clause which protects any action taken under the erstwhile law including the Rules. This is in spite of a subsequent change in law. The very wordings in this section establish its retrospective effect in terms of this section the certificate issued by the authorities under the erstwhile Rule 57E would be a valid document for the present appellant to take credit in spite of the subsequent change in the Rules. It is directed that the credit be so accorded and allowed.