

**Frick India Ltd. Vs. Cce**

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

**Decided On :** Oct-29-2002

**Reported in :** (2003)(86)ECC153

**Judge :** P Chacko

**Appellant :** Frick India Ltd.

**Respondent :** Cce

**Judgement :**

1. This appeal of the assessee is against the order of the Commissioner (Appeals) disallowing Modvat credit to the extent of Rs. 29,334 to the appellants on the ground that the invoices on the strength of which the credit was taken did not bear pre-printed Serial Number. The Serial Number of the invoice was hand-written.

2. Ld. Counsel for the appellants submits that the question whether Modvat credit was deniable on the above ground has since been settled by the Tribunal's Larger Bench in CCE, Ahmedabad v. Satyen Dyes 2002 (79) ECC 354 (IB): 2001 (47) RLT 669 (Tri-LB), wherein it was held that where the inputs were duty-paid and received by the assessee in their factory and utilized in the manufacture of their final product, Modvat credit on such inputs was not liable to be denied on the ground that the invoice under cover of which the inputs were received by the assessee was bearing hand-written Serial No. instead of a printed one.

3. Ld. DR, on the other hand, submits that the decision of the Larger Bench is against the express provisions of Rule 57G and Rule 57GG of the Central Excise Rules, 1944. He, further, relies on the decision of the Hon'ble Supreme Court in CCE, Ahmd. v. Cadila Labs. Pvt. Ltd. 2002 (82) ECC 709 (SC), wherein the Apex Court denied the benefit of an exemption Notification to the assessee on the ground that the procedure under Rule 56A of the Central Excise Rules was not followed by them.

4. The short question which arises in this appeal stands squarely covered in favour of the assessee by the decision of the Tribunal's Larger Bench in Satyen Dyes (supra).

5. I have perused the judgment of the Hon'ble Supreme Court cited by the Ld. DR and I find that the Apex Court found non-compliance, by the assessee, with a substantial condition laid down under Rule 57A and accordingly, denied the benefit of exemption to them. The instant case is not comparable to the case considered by the Apex Court. Whether invoice contained pre-printed Serial Number of only hand-written Serial Number in the instant case is a trivial aspect, which has nothing in common with the aspect of non-fulfilment of substantial condition under Rule 56A by the assessee in the case considered by the Supreme Court.

6. Following the Larger Bench decision, I set aside the order of the lower appellate authority and allow this appeal.

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