

**Cinelamp Vs. Commissioner of Central Excise**

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

**Decided On :** Jul-24-2003

**Reported in :** (2003)(157)ELT557TriDel

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

**Appellant :** Cinelamp

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. The appellants filed these appeals against the common order-in-appeal whereby the Commissioner (Appeals) after allowing the refund claim adjusted the amount against the pending dues.

3. The contention of the appellants is that the adjustment was made without any notice to the appellants. The appellants relied upon the decision of the Tribunal in the case of Kutty Flush Doors & Furniture Co. (P) Ltd. v. Collector of Central Excise, reported in 1989 (42) E.L.T. 730 (Tribunal).

4. The contention of the appellants is also that the refund, due to M/s. International Talkie Equipment Co. Pvt. Ltd. was adjusted against the pending dues of M/s. Kinetone. The Tribunal in their Final Order No. 71/03-B, dated 5-2-2003 held that M/s. Kinetone was the manufacturer. Therefore, in the present proceedings the refund sanctioned to M/s. International Talkie Equipment Co. Pvt. Ltd. cannot be adjusted against the dues pending against M/s. Kinetone.

5. The contention of the Revenue is that a penalty of Rs. 50,000/- was imposed on M/s. Cinelamp and that amount was adjusted against the refund claim of M/s. Cinelamp. The contention of the Revenue is also that the Tribunal in the final order held that M/s. International Talkie Equipment Co. Pvt. Ltd. was dummy of M/s. Kinetone, therefore, clubbed the clearance of M/s. Cine-lamp and M/s. International Talkie Equipment Co. Pvt. Ltd., hence, the adjustment of refund against the excise dues is right.

6. In this case the refund of pre-deposit was allowed by the Revenue authorities and the same was adjusted against the excise dues. Before adjusting the amount of the appellants was not to put notice to explain their stand. Therefore, the matter requires reconsideration in respect of adjustment of refund against the excise dues. The adjudicating authority will decide afresh the adjustment of dues after affording an opportunity of hearing to the appellants. The appeals are disposed of by way of remand.

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