

**Engineering Enterprises Vs. Commissioner of Customs**

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**SooperKanoon Citation :** [sooperkanoon.com/33096](http://sooperkanoon.com/33096)

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

**Decided On :** Nov-17-2003

**Reported in :** (2004)(169)ELT282Tri(Mum.)bai

**Judge :** J Balasundaram, A M Moheb

**Appellant :** Engineering Enterprises

**Respondent :** Commissioner of Customs

**Judgement :**

1. The claim of the appellants herein for DEPB credit on goods described by them in the Shipping Bills for export as fibre tip pens has been rejected by the authorities below, holding that the goods were not writing instruments covered under Sr. No. 1/63 of the DEPB which covers inter alia "all kinds of metallic/non-metallic writing instruments...." 2. We have heard both sides. The catalogue submitted by the appellants showed that the goods under export were marking systems for recorders and plotters. This is not disputed. The claim of the appellants is that the product is writing instrument irrespective of its use as parts of Marking Systems for Recorders and Spares for Process Control Instruments. We find that the goods can not be used by themselves and can be used only after being attached to some equipments, and their use is in refineries, fertilizer plants for keeping track of various process, temperature, flow, etc. In other words, they are not capable for use of human beings for writing with hand. Further, the DEPB Committee in its meeting held on 9-5-2000 has decided that marking system for recorders and plotters shall not be classified as writing instruments for DEPB

benefits. In the face of this clarification from the Authority administering the DEPB scheme, the appellants cannot seek DEPB benefit for the goods under export. The reliance placed by the appellants on the Tribunal's order, dated 24-5-2002 by which the earlier order of the Commissioner (A) holding that DEPB benefit was not admissible to the goods in question was set aside and the case remanded, does not come to the rescue of the appellants as they have not satisfied us that the clarification issued by the CBEC in the light of the ruling of the DEPB Committee is not applicable or that the view taken in the CBEC circular is not correct. We, therefore, see no reason to interfere with the order and accordingly uphold the same and reject the appeal.

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