

**Commissioner of Central Excise Vs. Accuprint Systems (P) Ltd.**

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

**Decided On :** Apr-29-2004

**Judge :** K Kumar

**Appellant :** Commissioner of Central Excise

**Respondent :** Accuprint Systems (P) Ltd.

**Judgement :**

1. Shri M.H. Sheikh, Ld. JDR appeared on behalf of the Revenue and he submitted that re-engraving on used cylinders amounts to manufacture.

The duty has been paid by the appellant without protest. The goods in question are dutiable as per sub Heading Tariff 8442 of Schedule of Central Excise Tariff Act. The Superintendent rightly refused to issue certificate under Rule 57E(5).

2. Shri P.K. Shetty, Ld. Advocate appeared on behalf of the respondent and he submitted that the appeal filed by the revenue is infructuous inasmuch as the certificate has already been issued by the Superintendent on 30.03.2000. The certificate has not been questioned by the department nor any appeal has been filed against the same. The Order-in-Original was passed on 06.11.1998 and the Order-in-Appeal was passed on 28.9.2000 whereas the appeal has been filed by the department on January 2001 and as such the department was well within the knowledge of the issue of the certificate still they have chosen not to challenge the same. He submitted that the certificate issued subsequently is a valid document and since the duty amount was paid subsequently the appellant are fully entitled

for the benefit. The Ld.

Counsel in support of his contention that, re-engraving on used cylinders does not amount to manufacture, relied on the Larger Bench decision in the case of J.S.S. Printing Industries Pvt. Ltd. and Anr.

v. CCE reported in 2000 (41) RLT 133 (CEGAT- L.B.). He also relied on the decision in the cases of Bharat Petroleum Corporation. Ltd. v. Collector of Customs E.L.T.402 (Tribunal), West Coast Engineering Works v. CCE E.L.T.400 (Tri.), Jaohar Enterprises v. Commissioner of Customs reported in 1996 (84) E.L.T.226 (Tri.) and Ultramarine & Pigments Ltd. v. CCE reported in 1996 (84) E.L.T.223 (Tri.) to the effect that when the export goods have been cleared for home consumption and the appellants have received the certificate from the Superintendent of Jurisdictional range, modvat credit is admissible in terms of Rule 57S of the Central Excise Rules, 1944.

3. After hearing both sides, perusal of the records and case laws relied on by the Ld. Advocate, I find that the issue involved in the case is squarely covered in favour of the appellant by the afore-said decisions. I, therefore, dismiss the appeal filed by the Revenue.

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