

**Tooltronics Vs. the Commissioner of Central**

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

**Decided On :** May-21-2004

**Judge :** M T K.D.

**Appellant :** Tooltronics

**Respondent :** The Commissioner of Central

**Judgement :**

1. The appeal is directed against the order-in-appeal, whereby modvat credit to the extent of Rs. 69,562.50 was denied and a penalty of Rs. 5,000/- was imposed on the appellants.

3. I note that the modvat credit was denied to the appellants on the ground that the duty paying documents viz., invoices were issued in the name of their Andheri plant, whereas the said goods were actually used in the Ghatkoper plant. In the order of the Commissioner (Appeals), it has been reported that the Andheri unit is not holding any registration and there is no provision under Central Excise Rules to permit combined registration for units situated at different location.

4. The appellants have pleaded that, there is no denial of the fact that, the inputs were received in their Ghatkoper plant and used in the fabrication/manufacture of finished excisable goods by doing part process in Andheri and remaining process in their Ghatkoper unit.

Therefore even if the inputs are treated to have been used at Ghatkoper unit, the credit cannot be denied for the reason that disclosure of name of Andheri unit on the invoice is curable defects as held by the Tribunal in various judgments. It is claimed by the appellants that, the Andheri unit only intermediate goods are made and the final products are manufactured by Ghatkopar unit and the clearances are also made from Ghatkopar unit. Besides, the appellants also claimed that, the utilisation of inputs in Andheri unit and return of the intermediate goods made from Ghatkopar the inputs supplied by Ghatkopar unit for manufacture of final goods would also not come in way of their availing credit in terms of the judgment of the Hon'ble Tribunal in the case of Jaypee Rewa Cement v. CCE, Raipur reported in 1997 (95) ELT 429 (Tri) which is affirmed by the Supreme Court, as reported in 2001 (133) ELT 3 (SC) in terms of the said judgment even if the inputs are used outside the factory, the produces made by such use outside the factory when received in the factory would meet the requirement of provisions of Rule 57A requiring the inputs to be used in the manufacture of final products as contained in Rule 57A.5. Therefore, following the ratio of the judgments in the case of Jaypee Rewa Cement (supra) I hold that, the inputs are eligible for modvat credit, despite partial use of the inputs outside the factory premises of the main unit at Ghatkoper. Similarly, the indication of the name of Andheri Unit on the duty paying documents would not come in way of "allowing credit since this is a minor technical deficiency in the duty-paying document and there is no allegation that the inputs are duty paid or these have not been utilised in the manufacture of final goods.

6. Accordingly, the appeal succeeds and the same is allowed with consequential relief, if any, in accordance with the law. The orders of the lower authorities are consequentially set aside.

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