

**Cce Vs. Krishna Synthetics**

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**SooperKanoon Citation :** [sooperkanoon.com/36094](http://sooperkanoon.com/36094)

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

**Decided On :** Jul-29-2004

**Reported in :** (2004)(97)ECC443

**Judge :** A T V.K., P Bajaj

**Appellant :** Cce

**Respondent :** Krishna Synthetics

**Judgement :**

1. In this appeal, which has been filed by the Revenue against the impugned Order-in-Appeal dated 25.9.2003 passed by the Commissioner (Appeals), the issue relates to the denial of the benefit of Notification No. 5/98-CE dated 2.6.98, as amended, providing concessional duty for Dyed Textured Yarn produced out of duty paid Textured Yarn, on which no credit was availed under Rule 57A or 57B or 57Q of the Central Excise Rules. Both the authorities have allowed the benefit of this notification to the respondents and dropped the duty demand against them.

2. Ld. JDR has contended that the respondents availed the Modvat credit on the Filament Yarn used in the manufacture of Synthetic Filament Textured Yarn. Therefore, they could not discharge the concessional rate of duty from the Modvat Credit Accounts maintained in RG-23A Part-II register at the time of clearance of the Dyed Textured Yarn.

The impugned order, therefore, deserves to be set aside.

3. On the other hand, Ld. Counsel has reiterated the correctness of the impugned order.

5. From the record, we find that the respondents are engaged in the manufacture of Synthetic Filament Textured Yarn. They availed Modvat credit on the duty paid on the raw material i.e. Filament Yarn and cleared the Synthetic Filament Textured Yarn on payment of duty. They are also engaged in the manufacture of Dyed Textured Yarn. But admittedly, they did not take any credit on the duty-paid Textured Yarn used as inputs in the manufacture of the same. Therefore, for having not availed the Modvat credit on the inputs used in the manufacture of the final product -- Dyed Textured Yarn, they could not be denied the benefit of Notification No. 5/98-CE dated 2.6.98. They were within their right to clear the Dyed Textured Yarn on payment of concessional rate of duty under the said Notification, through PLA as well as RG-23A, Part-II Account. The proviso inserted to Rule 57F(12) of the Central Excise Rules w.e.f. 1.3.97 clearly indicates that anything contained in Rule 57A and the notifications issued thereunder, the credit of specified duty allowed in respect of any inputs may be utilized towards the payment of duty of excise on any other final product, whether or not such inputs have actually been used in the manufacture of such other final product, if the said inputs have been received and used in the factory of production on or after the first date of March 1997. Therefore, the respondents having not availed the Modvat credit, used in the manufacture of Dyed Textured Yarn, could pay the duty at the concessional rate from the Modvat Account taken by them on the Filament Yarn utilized by them in the manufacture of Synthetic Filament Textured Yarn.

6. In the light of discussion made above, the impugned order passed by the Commissioner (Appeals) confirming the order of the adjudicating authority dropping the duty demand against the respondents is perfectly valid and the same is upheld. The appeal of the Revenue is dismissed.

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