**ivp Ltd. Vs. Cce**

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**SooperKanoon Citation** : sooperkanoon.com/36223

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

**Decided On :** Aug-12-2004

**Reported in** : (2004)(117)LC216Tri(Mum.)bai

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

**Appellant** : ivp Ltd.

**Respondent** : Cce

**Judgement** :

1. The brief facts of the case are that on 13.6.1994 it was noticed by the Excise authorities that the appellants herein who are engaged in the manufacture of excisable goods galling under Chapters 26, 29, 34, 39 etc. of the Schedule to CETA, 1985 had take credit of Rs. 15,92,477/- in their RG. 23A Part II Account without taking corresponding credit of the same in the RG. 23A part I Account of quantity credit. On this basis it was alleged that the credit had been availed without actual receipt of inputs in their factory; show cause notice dated 22.7.1994 proposing recovery of the credit for the above reason and proposing penal action was issued, which was adjudicated by the Assistant Commissioner who upheld the duty demand and also imposed a penalty of Rs. 2000/- upon the assessees; the Commissioner (Appeals) upheld the adjudication order; hence this appeal.

2. We have heard both sides. The plea of the appellants that goods were actually received in their factory and non-entry of the same in the RG 23A Part-I Account was only due to strike in their factory, is not tenable as they did not produce even

their private stock records such as Bin Cards etc. evidencing receipt of inputs before the Range Superintendent and produced such material only before the adjudicating authority who has rejected the same on the ground that the records were susceptible to manipulation. Further the Commissioner (Appeals) has clearly noted that the appellants did not produce copies of any invoices on the basis of which they took the credit of the amount in question. Therefore, the appellants have not substantiated their claim that inputs were actually received in their factory and the department's stand of non receipt of inputs which is based on the non-entry in RG. 23A Part I, remains unrebutted, and their plea of receipt remains unsubstantiated.

3. We, therefore, see no reason to interfere with the impugned order and accordingly uphold the same and reject the appeal.

(Operative part of the order already pronounced in the open Court on 12.8.2004.)