

**C.C. Ex. Vs. Nocil**

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**SooperKanoon Citation :** [sooperkanoon.com/36301](http://sooperkanoon.com/36301)

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

**Decided On :** Aug-20-2004

**Judge :** S T S.S., T Anjaneyulu

**Appellant :** C.C. Ex.

**Respondent :** Nocil

**Judgement :**

1. Revenue is in appeal against the Commissioner (Appeals) having allowed the appeal filed by the assessee and set aside the order of duty and penalty arrived by the lower authority on the assessee, for having removed fully manufactured goods for testing from the Plant to a laboratory without accounting the same in RG 1 register or and discharging the duty thereon the ground - i) order in case of Bhansali Engg. Polymers 1999 (114) ELT 94 relied upon by the Commissioner has not been accepted by the department.

ii) Once goods are manufactured they can be remanding on payment of duty.

iv) No further Manufacturing process was required in respect of the batch which was sampled.

2. When the matter was called, Ld DR relied upon the following decision - The Respondent are absent. Matter is pending since the year 2000. No adjustment request from Respondents. We proceed to decide the issue.

Following the above said decisions, we find no reason to exempt the samples from levy of duty. The duty is confirmed. As regards penalty, since the issue of duty on samples for testing got finally settled by the apex court in the case of ITC v. UO1 (151) ELT 246 SC, the benefit of doubt and therefore no Penalty would go to the Respondents. Revenue appeal as regards penalty is therefore not allowed.

3. Consequently the Revenue's appeal allowed as regard duty of Rs. 1,82,918 confirmed by the Additional Commissioner. The order of penalty imposed by Additional Commissioner is set aside and his order confirmed as regards duty only after setting aside the order of CCE (Appeals).

Appeal partially allowed as above.

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