

**Commissioner of Central Excise Vs. Flex Industries Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/37121](http://sooperkanoon.com/37121)

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

**Decided On :** Nov-18-2004

**Reported in :** (2005)(180)ELT251TriDel

**Judge :** P Bajaj

**Appellant :** Commissioner of Central Excise

**Respondent :** Flex Industries Ltd.

**Judgement :**

1. In this appeal the Revenue has disputed the correctness of the impugned order vide which the Commissioner (Appeals) has allowed the credit amount of Rs. 24,000/- to the respondents.

2. Learned SDR has contended that suo motu credit of the disputed amount could not be taken by the respondents without due intimation to permission from the Department. He has referred to the provisions of Rule 173-1(4) of the Rules and Board's Circular No. 249/83/96-CX., dated 11-10-96 in support of his contention. But, in my view, this contention of the learned SDR cannot be accepted, keeping in view the facts and circumstances of the case. From the record, it is evident that the respondents admittedly at the time of clearance of the goods, paid excess duty of the amount detailed above. They showed the excess payment in RT-12 returns which were duly assessed. Therefore,, it cannot be said that there was no intimation to the Department regarding excess payment of duty. They had also produced certificate issued by the Central Excise Officer in. that regard. Therefore,

they were not prevented by any provision of the law from taking credit of the excess paid duty, in their record. They could legally take the same. The case of the respondents is fully covered by the Tribunal's judgment in the case of Tide Water Oil Company v. C.C.E., Chennai [2002 (52) RLT 463] wherein in similar circumstances, the credit of the excess paid duty to the assessee was allowed. The provisions of Rule 173-1(4) and the above Board's Circular, have no application to the case of the respondents.

3. Consequently, the impugned order is upheld and the appeal of the Revenue is dismissed.

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