

**Broadway Exports Vs. Cce**

**Broadway Exports Vs. Cce**

**SooperKanoon Citation :** [sooperkanoon.com/37488](http://sooperkanoon.com/37488)

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

**Decided On :** Dec-23-2004

**Reported in :** (2005)(99)ECC118

**Judge :** M T K.C.

**Appellant :** Broadway Exports

**Respondent :** Cce

**Judgement :**

1. The issue involved in these three appeals is whether the credit taken by the appellants on the basis of the invoices issued by the manufacturers certifying that duty liability to be discharged under Rule 96ZP/goods removed under Rule 96ZP(3) satisfies the conditions of the Notification No. 58/97-GE.2. Shri Sudhir Malhotra, learned Advocate, appearing for the appellants pleaded that in Appeal No. E/1995/04-NB(S) the amount of duty in dispute in Rs. 76,912 which was the credit taken by the appellants on the basis of the invoices issued by Bhawani Steel Rolling Mills and Kaushal Steel Rolling Mills. He pleaded that the Superintendent of Central Excise, Range-IV, Mandi Gobindgarh has issued a certificate certifying that M/s. Bhawani Steel Rolling Mills have discharged the duty on full and final basis alongwith interest on delayed payments for the duty deferred during the Compounded Levy Scheme for the period 9/97 to 3/2000 on the basis of the capacity assessed by the Commissioner vide the Order-in-Original No. 6/33/CE/Comp.Levy/2000 dated 30.5.2000.

He, therefore, pleaded that all the invoices issued by Bhawani Steel Rolling Mills certifying that the goods removed under Rule 96ZP(3) on the basis of the invoices makes the appellants eligible for credit as the Superintendent has issued a certificate that duty has been paid.

Regarding invoices of Kaushal Steel Rolling Mills, he pleads that since the invoices show that duty liability to be discharged under Rule 96ZP(3), the credit should not be denied to the appellants on the ground that certificate does not show that duty has been paid. He relied on the Tribunal's decision in the case of Shree Ambica Steel Industries v. CCE, Chandigarh, Final Order No. 755-760/04-B dated 21.9.2004 where the Tribunal has followed the decision of the Punjab & Haryana High Court in the case of Vikas Pipes v. CCE, Chandigarh-II, 2003 (158) ELT 680 where it was held that deemed modvat credit can be claimed in terms of Notification No. 58/97-CE and that only requirement of the notification is that the assessee should produce the invoices covering the goods in which the manufacturer should give a declaration that the manufacturer had suffered excise duty. There is no requirement in the notification that the assessee has to lead evidence to show that the supplier had discharged its excise duty liability. He, therefore, pleads that the appeals may be allowed.

3. Shri Sudhir Malhotra pleads that in Appeal No. E/1996 and 1997/04-NB(S), the dispute is in respect of invoices issued by Bhawani Steel Rolling Mills for which they have already produced certificate issued by the Superintendent in Appeal No. E/1995/04-NB(S) and all other invoices in these appeals are covered by the decision of the Tribunal in the case of Shree Ambica Steel Industries v. CCE, Chandigarh (Supra). Therefore, the 4. Shri V. Valte, appearing for the Revenue pleaded that the certificate of Range Superintendent which the appellants are now producing is dated 18.12.2001 and the Order-in-Original was issued on 6.2.2002 and the Order-in-Appeal was issued on 30.1.2004. Therefore, the appellants could have produced these certificates before the Adjudicating Authority as well as the lower Appellate Authority; which they failed to do so. In these circumstances, the certificate issued by the Superintendent of Range-IV, Gobindgarh needs verification regarding the facts stated therein and this can be done by the original authority. Therefore, these appeals need to be sent back to the original authority

for verification of the fact and taking decision.

5. I have considered the submissions made by both the sides and I find that in these appeals, the certificate of the Superintendent dated 18.12.2001 which is now being produced by the learned counsel of the appellants could have very well been produced before the lower authorities but it was not done. Therefore, the factual position requires verification as stated in this certificate which could be done only by the lower authority. I, therefore, set aside the order of the Commissioner (Appeals) and remand back the matter to the original authority to take a fresh decision regarding allowance of credit to the appellants under Notification No. 58/97-CE after verifying the facts as stated by the appellants now and after giving proper opportunity of hearing to the appellants.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**