

Commissioner of Central Excise Vs. Banswara Textile Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-20-2005

Reported in : (2005)(183)ELT318TriDel

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Banswara Textile Mills Ltd.

Judgement :

1. In this appeal, filed by the Revenue, the issue relates to the durability on waste and scrap of capital goods removed by M/s. Banswara Textile Mills Ltd. 2. We heard Shri Vikas Kumar, learned SDR for Revenue and Shri K.K.Anand, learned Advocate for the respondents. The Deputy Commissioner, under Order-in-Original No. 52/2004 dated 23-2-2004, confirmed the demand of duty and imposed an equivalent amount of penalty on the waste and scrap of the capital goods on the ground that the respondents had failed to prove that the scrap was generated from the machines which were procured prior to 1990. The Commissioner (Appeals), however, set aside the Order-in-Original on the ground that there is nothing on record to show that the scrap was generated out of the machines in respect of which Modvat credit of duty has been availed of by the respondents. The learned SDR has referred to Rule 57S(2)(c) which provides for payment of duty on waste and scrap of the capital goods in respect of which Modvat credit has been taken by the assessee. But the Revenue has not brought any material or evidence on record to show that the scrap, in question, was generated out of the capital goods

on which the Modvat credit was availed of by the respondents. The primary responsibility is of the Revenue to prove that the product, on which duty is demanded, is excisable which has not been discharged by the Revenue in the present matter. Accordingly, the appeal filed by the Revenue is rejected.

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