

**Cce Vs. Modi Rubber Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/38873](http://sooperkanoon.com/38873)

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

**Decided On :** Apr-27-2005

**Judge :** A T V.K.

**Appellant :** Cce

**Respondent :** Modi Rubber Ltd.

**Judgement :**

1. Revenue has filed this Appeal against Order-in-Appeal No. 10/2004 dated 23.1.2004 which the Commissioner (Appeals) has allowed the MODVAT credit to M/s. Modi Rubber Ltd. 2. Heard Shri P.M. Rao, learned Departmental Representative and Shri Ajai Singhal, Excise Officer of the respondent company. The Deputy Commissioner, under Order-in-Original No. 153/2000 dated 20.10.2000, has disallowed the MODVAT credit as two invoices issued by M/s.

Hindustan Wires Ltd. were not proper invoices inasmuch as these were extra copies on which 'duplicate copy for transporter' were typed after using white fluid on 'extra copy'. Commissioner (Appeals), however after perusing both the invoices in question issued by M/s. Hindustan Wires Ltd., Faridabad gave his specific finding that the words 'duplicate for transporters' were typed after using white fluid under the signature of the authorized signatory of the supplier. He has further observed that 'in case of any doubt regarding the genuineness of invoices and duty payment particulars, the same should have been verified by the Range Staff. Unless and until tempering on invoices is not proved, MODVAT is not deniable nor penalty imposable. No such verification report is on record.' In the grounds of

Appeal, the Revenue has only relied upon the decision of the Larger Bench of the Tribunal in the case of CCE v. Avis Electronics Pvt. Ltd. wherein it has been held that "when a particular thing is directed to be performed in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise." The Revenue has thus not rebutted the finding given by the Commissioner (Appeals) in the impugned order that the words 'duplicate for transporter have had been duly signed by authorised representative of the supplier of the invoice. Under Rule 52A of the Central Excise Rules, 1944, manufacturer can remove the goods only on the invoices as prescribed under the said Rules. Once the invoices under which excisable goods have been cleared by a manufacturer registered with the Excise Department and the goods have been received under the invoice which is 'copy duplicate for transporter' the respondents are eligible to take the MODVAT credit on the strength of such copy. As rightly observed by the Commissioner (Appeals), in case of doubt, the matter should have been got verified from the Central Excise Office at the supplier's end which even at the stage of Appeal before me seems to have not been done. Accordingly, there is no reason to interfere with the impugned order.

3. MODVAT credit was also denied to the respondents by the Deputy Commissioner in respect of invoice No. 104 dated 26.2.1995 on the ground that there were several cuttings. Commissioner (Appeals) has, however, allowed the MODVAT credit on the strength of such invoice after observing that name of consignee, description and quantity of goods and amount of duty paid were clearly mentioned on the inputs and there was no cutting as far as these information was concerned. Again there is no rebuttal of this specific finding of the Commissioner (Appeals). Further, in view of Board's Circular No. 441/7/91-CX dated 23.2.1999 read with Notification No. 7/99-CE by which provisions of Rule 57G of Central Excise Rules were amended providing MODVAT credit is not disallowable for some technical lapses in the duty paying documents. Accordingly, the Appeal filed by the Revenue is rejected.