

**Cce Vs. S.V. Electronics**

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**SooperKanoon Citation :** [sooperkanoon.com/38895](http://sooperkanoon.com/38895)

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

**Decided On :** Apr-28-2005

**Judge :** S Kang, Vice

**Appellant :** Cce

**Respondent :** S.V. Electronics

**Judgement :**

2. The Revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals). In this case show-cause notice was issued to the appellant for denying the benefit of Modvat credit on capital goods on the ground that they availed depreciation under the Income Tax Act in respect of some capital goods including the duty portion. The Commissioner (Appeals) allowed appeals filed by the respondents on the ground that in the revised Income Tax authorities, the appellant excluded the portion whereby the depreciation was not claimed and the assessment returns were accepted by the concerned authorities after due assessment on 4.7.2000 and the assessment was finalized disallowing depreciation and without any objection the depreciation was claimed wrongly.

3. The Revenue filed this appeal on the ground that once the appellant claimed the depreciation before the Income Tax authorities they are not entitled for the benefit of credit in respect of capital goods and the revised returns were filed after the objection taken by the excise department.

4. I find that the Income Tax returns were duly assessed by the Income Tax authorities without depreciation in respect of the capital goods on which credit has been taken the appellants are entitled for the benefit of credit in respect of the capital goods in question. Shri Ghanshyam Auto Parts Pvt. Ltd. v. CCE reported in 2004 (178) ELT 163 allowed the Modvat credit in similar situation. In view of the above decision, I find no infirmity in the impugned order. The appeals are dismissed.

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