

**Ashirwad Steel (P) Ltd. Vs. Commissioner of Central Excise**

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

**Decided On :** May-03-2005

**Reported in :** (2005)(102)ECC237

**Judge :** S Kang, Vice, A T V.K.

**Appellant :** Ashirwad Steel (P) Ltd.

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. Heard learned Senior Departmental Representative as no one appeared on behalf of the Appellant. In this case, the Appellants were availing the benefit of deemed credit under Notification 58/97. The show cause notice was issued to the appellant denying the Modvat credit on the ground that manufacturers of the inputs had not paid appropriate duty.

Adjudicating Authority has denied the benefit of deemed credit and imposed a penalty. The Appellants also filed the Appeal and same was dismissed vide impugned order.

2. In the Appeal memorandum, contention of the Appellants was that they have received the inputs under the cover of invoices, on which declaration was given by the manufacturer that appropriate duty has been paid. On the basis of this declaration, the deemed credit was taken.

3. Contention of the Revenue is that in some of the invoices such as issued by Wazirpur Industries, no declaration in regard to discharge of duty was given and in some other cases, the declaration was given and on verification, it was found that appropriate duty has not been made.

4. We find that deemed credit under Notification No. 58/97 is denied on the ground that appropriate duty has not been paid by the manufacturer of the inputs. Some of the manufacturers from whom the Appellant received the inputs made a declaration in the invoices that appropriate duty has been paid.

5. We find that this issue is decided by the Hon'ble Punjab and Haryana High Court in the case of Vikash Pipes v. Commr. of Central Excise, 2005 (99) ECC 11 (P&H) : 2003 (158) ELT 680. The Hon'ble High Court held that deemed credit claimed in the terms of Notification No.58/97-CE cannot be denied where the supplier of inputs certify that inputs suffered Central Excise duty and there is no requirement under the Notification that assessee has to lay the evidence to show that the supplier of inputs has discharged duty liability. In view of the above decision of the Hon'ble High Court, the Appellants are entitled for deemed credit on the strength of invoices, where declaration is made that duty has been discharged as in case where no such declaration is given, the Appellants are not entitled for the benefit of demand credit. The Appeal filed by the Appellants is disposed of as indicated above.

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