

**Cce Vs. Mordi Textile and Processors Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/39266](http://sooperkanoon.com/39266)

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

**Decided On :** Jun-06-2005

**Judge :** S Kang, Vice-

**Appellant :** Cce

**Respondent :** Mordi Textile and Processors Ltd.

**Judgement :**

2. Appellants filed this appeal against the order in appeal passed by the Commissioner (Appeals) whereby the demand of duty on account of denial of MODVAT credit is set aside.

3. The appellants are engaged in the manufacture of excisable goods and were availing the CENVAT credit in respect of the inputs used in the manufacture of final product. The respondents availed certain inputs from M/s. Bhilwara Melba under the invoices showing payment of duty.

The respondent's availed credit. A show cause notice was issued to the respondents for denial of the credit on the ground that M/s. Bhilwara Melba was not required to pay full duty as the goods were exempted under the conditional notification.

4. The Adjudicating authority confirmed the demand. However.

Commissioner (Appeals) set aside the demand.

5. In this case the respondents taken credit on the strength of invoices issued by the manufacturer of the inputs and the manufacturer has the choice to avail the benefit of conditional notification or to pay appropriate duty. The manufacturer of the inputs chosen not to avail benefit of conditional notification and were clearing the goods at the Tariff rate. It is a settled position of law that assessment of the goods cannot be reopened at the customer side as held by the Tribunal in the case of Kerala State Electronic Corporation v. Collector of Central Excise, Kochi, and Eveready Industries (I) Ltd. v. C.C.E. . In view of the above decisions of the Tribunal. I find no infirmity in the impugned order. The appeal is dismissed.

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