

**Flex Industries Limited Vs. C.C.E.**

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**SooperKanoon Citation :** [sooperkanoon.com/39304](http://sooperkanoon.com/39304)

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

**Decided On :** Jun-09-2005

**Judge :** S Kang, Vice-

**Appellant :** Flex Industries Limited

**Respondent :** C.C.E.

**Judgement :**

2. Appellants filed this appeal against the order in appeal passed by the Commissioner (Appeals). In this case benefit of MODVAT credit was denied on the ground that the manufacture of the inputs paid excess duty.

3. The appellants are having various Units and manufacturing excisable goods. The excisable goods manufactured by one Unit were cleared to the other Unit on payment of duty and the other Unit has taken the credit in respect of the duty paid on inputs and capital goods. Show cause notice was issued for denial of the credit, which was paid excess to the specified duty as provided under the Central Excise Tariff. The case of the Revenue is that 16% duty is to be paid on the goods cleared by the manufacturer, whereas the manufacturer paid 24% duty and the credit was taken by the other Unit wrongly. The Revenue's case is that the credit can taken in respect of the specified duty as provided under Central Excise Tariff.

4. The contention of the appellants is that rate of duty for the year 1999-2000 was 24% and appellants were paying the same. The contention is that from March, 2000, the rate of dirty was reduced. However, the manufacturing Unit clearing the

goods after paying the duty at the rate of 24% up to November 2000. The contention is that the duty paid by the manufacturing Unit is accepted by the Revenue and all the assessments were final. The appellants relied upon the decision of the Tribunal in the case of Kerala Slate Electronic Corporation v. CCE, . In this case the Tribunal held that the credit is to be taken equal to the amount of duty shown in the duty paying documents.

5. The contention of the Revenue is that the inputs are liable to pay duty at the rate of 16%. whereas, the duty has been paid at the rate of 24%. Therefore, the excess credit has been paid to the other Unit.

6. In this case the benefit of MODVAT credit is being denied on the ground that the manufacturing Unit has been paid excess duty. The Tribunal in the case of Kerala State Electronic Corporation (Supra) held that the credit is to be taken equal to the amount of duty shown in the duty paying documents and Excise Officer has no jurisdiction to decide whether the duty was paid short or excess at the place where the credit has been taken. In view of the above decision of the Tribunal, the impugned order whereby the credit was denied is not sustainable and hence set aside. Appellants are entitled for taking credit in respect of duty paid by the other Unit on the goods. As the manufacturing Unit is also belonging to appellants, therefore, the manufacturing Unit is not entitled for any refund in respect of the excess duty paid. As the demand is set aside, therefore, the penalty is also set aside. The appeal is disposed of as indicated above.

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