

**Cce Vs. Rishabh Velvellen (P) Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/39334](http://sooperkanoon.com/39334)

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

**Decided On :** Jun-13-2005

**Reported in :** (2005)(191)ELT955TriDel

**Judge :** P Bajaj

**Appellant :** Cce

**Respondent :** Rishabh Velvellen (P) Ltd.

**Judgement :**

1. In this appeal the revenue has contested the correctness of the impugned order vide which the Commissioner(Appeals) has allowed the refund in cash to the respondents.

2. I have heard both the sides. Ld. DR has contended that the refund of the cenvat amount could only be allowed in that very account and not in cash to the respondents, therefore, the impugned order deserves to be modified. But keeping in view the facts and circumstances of the case in my view, the contention of the Ld. DR is not liable to be accepted.

2. The respondents had cleared the packing material of Modvatable Inputs vis. empty drums without payment of duty. They on the issuance of the Board's circular dt.19.7.99 after admission of departmental appeal before the Apex Court in the case of West Coast Indl. Gases Ltd. v. CCE, Cochin, deposited the duty amount of Rs. 3,07,652/- under protest during the period 2000-01 2001-02. But later on when

the decision of the Apex Court went against the Department, the Board again issued a circular dt. 6.6.03 clarifying that no duty is payable on the packing material of Modvatable inputs. On the strength of that circular, the respondents filed the refund claim. The adjudicating authority partly allowed the claim in cash, by cheque and partly through the cenvat.

3. The respondents thereafter disputed the correctness of the par: of that order of adjudicating authority before the Commissioner(Appeals) on the ground that since they are availing the exemption under notification No. 50/03 dt.10.6.03, they would not be in a position to utilise the credit in cenvat account. They had also relied upon the Board Circular dt.22.10.03 clarifying that the units opting for holiday after substantial expansion under Notification No. 50/03 were no longer to be registered and would deemed to have been de-registered. By relying upon this circular of the Board read with exemption Notification No. 50/03, the Commissioner (Appeals) has taken the view that the provisions of Cenvat Credit Rules and even Rule 9 regarding the registration of the unit, had become in applicable to the respondent's unit w.e.f. 10.9.03. Therefore, they are entitled to receive the refund in cash, by cheque. I do not find any illegality, keeping in view the above referred facts, in the impugned order of the Commissioner (Appeals). The allowing of refund through Cenvat when the Cenvat Credit rules had become in operative, to the case of the respondents would be meaningless and only on papers. Therefore, they had been rightly allowed the refund in cash by the Commissioner(Appeals). The ratio of law laid down in the case of Purvi Fabrics & Texturise (P) Ltd. v. CCE, Jaipur-II referred by Ld. DR is not attracted to the relevant case.

4. Consequently, the impugned order is upheld and appeal of the Revenue is dismissed.

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