

**Paharpur-3p Vs. Cce**

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

**Decided On :** Jun-16-2005

**Judge :** S Kang, Vice

**Appellant :** Paharpur-3p

**Respondent :** Cce

**Judgement :**

1. Heard both sides. The Appellants filed these appeals against Orders-in-Appeal passed by the Commissioner (Appeals) whereby the benefit of Modvat Credit was disallowed on the ground that Bill of Entry was in the name of company's head office at Calcutta whereas Credit has been taken in the factory which is situated at a different place. Credit was also disallowed on the ground that the Appellants had not mentioned the sub-heading of the Tariff Heading mentioned in the declaration.

2. The contention of the Appellants is that the Bill of Entry was filed in the name of head office as the Order was placed by the head office for import of machine and machinery. The contention is that the Credit was taken at the factory which is a division of the same company. The Appellants relied upon the decision of the Tribunal in their own case, where in same circumstances Credit was allowed. The appellants also contended that the goods in question are Lead Bus Bars to Chrome Tank and are parts of Galvanizing Plant and Galvanizing Plant is not entitled for Credit as Capital Goods.

Therefore, being part of Galvanizing Plant the goods in question are also entitled for Credit. The contention of the Appellants is also that Credit was disallowed on the ground that sub-headings were not mentioned in the declaration and it is also not mentioned that these are the parts of Galvanizing Plant. As these are parts of Galvanizing Plant the Credit is disallowable.

3. The contention of the Revenue is that Bill of Entry was not endorsed in the name of the factory and the Bill of Entry was in the name of head office. As the Credit had been taken in the factory the Credit had been rightly denied. In respect of parts of Galvanizing Plant the contention of the Revenue is that these are not covered under the definition of the capital goods.

4. In respect of the Appellants' contention that the Bill of Entry was in the name of head office of the company whereas the Credit had been taken in the factory I find that this issue has already been settled in Appellants own case Paharpur P-3 v. CCE . The Tribunal held that in a case where the Bill of Entry is in the name of head office and the Credit has been taken in the factory of a division of the same company credit cannot be claimed.

5. In respect of the parts of Galvanizing Plant the Revenue is not disputing that the goods in question are not part of Galvanizing Plant.

The parts of the specified capital goods which are classified in any subheading are entitled for the Credit. In view of the above discussion the impugned Orders are set aside and the appeals are allowed.

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