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**Spread Coating Pvt. Ltd. Vs. Commissioner of Central Excise**

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**SooperKanoon Citation** : sooperkanoon.com/39941

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

**Decided On :** Aug-09-2005

**Reported in** : (2005)(190)ELT349TriDel

**Judge** : P Bajaj

**Appellant** : Spread Coating Pvt. Ltd.

**Respondent** : Commissioner of Central Excise

**Judgement** :

1. This appeal has been directed against the impugned order-in-appeal vide which the Commissioner (Appeals) has confirmed the duty demand and denial of Modvat credit against the appellants.

2. I have heard both the sides. The record shows that the credit of Rs. 28,800/- has been disallowed to the appellants on the inputs covered under the Invoice No. 265, dated 27-9-99 as the same was no in their name but in the name of M/s. Berger Paint India Ltd. This wrong availment of credit was not even disputed by the appellants before the authorities below and they have already reversed the credit of the above said amount. Therefore, the impugned order in this regard is affirmed.

3. However duty demand of Rs. 36,755/- in respect of the paints samples and of Rs. 2042/- leviable on resin samples against the appellants, cannot be sustained. The demand of both these amounts have been confirmed against the appellants

on the ground that they had disposed of the samples of the paints and resins in a clandestine manner without payment of duty. But there is no tangible evidence on the record to substantiate this ground. The appellants are engaged in the manufacture of pants on job work basis for M/s. Berger Paints India Ltd. during the period in dispute (1-4-98 to 31-12-2001), while manufacturing the paints, they kept samples of the paints and the resins. The entries were made by them in their sample register and the correctness of the same has not been questioned by the Deptt. According to the appellants, those samples were decanted by mixing the same with the paints mixture during the course of manufacture, after the expiry of one year period.

Their version had not been rebutted by the revenue by bringing on record any material evidence. The only allegation made in the SCN is that the samples had been disposed of by them in a clandestine manner, but when and to whom remains undisclosed. The names of the buyers had not been identified in the SCN, no incriminating document in this regard was also found in the factory premises of the appellants. No excess or shortage of raw material or finished goods was also detected by the officers in the factory premises. Under these circumstances, the above said version of the appellants is to be accepted. The impugned order confirming the duty demand amount with penalties as detailed there in respect of the samples of the paints resins cannot be sustained and is set aside.

4. Consequently, the impugned order accordingly stands modified. The appeal of the appellants stands disposed of in the above terms.

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