Commissioner of Central Excise Vs. Excel Industries Ltd.

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SooperKanoon Citation : sooperkanoon.com/40501

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-07-2005

Reported in : (2006)(193)ELT477Tri(Mum.)bai

Judge : S T Chittaranjan

Appellant : Commissioner of Central Excise

Respondent : Excel Industries Ltd.

Judgement :

1. Heard both sides. The respondents have received the capital goods initially in their factory at Roha and taken credit of 50% of duty as Modvat credit. Subsequently, they removed the capital goods to their own factory at Lote Parshuram. On such removal, they reversed only 50% credit, which they have earlier taken. This was clearly irregular as Rule 57AB(1)(b) required full duty to be paid on removal of such capital goods. However, they took credit of only the amount reversed by them in their Lote Parshuram unit. Subsequently, they have taken credit of the balance 50% duty directly in their Lote Parshuram unit. I find that such credit was admissible under Rule 57AC(2)(b) since the condition of capital goods being still in the use of the manufacturer was fulfilled even though the capital goods have moved to another unit of the same manufacturer. Though, there is a contravention of Rule 57AB(1)(b) in the sense that when the capital goods were removed, full duty on the same was not paid as required under that Rule, yet, the decision of the lower appellate authority, keeping in view that the appellants have not taken any excess credit over and the duty paid by them, is

reasonable under the circumstances and the same cannot be faulted.