

**Cce Vs. Raj Creators**

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

**Decided On :** Jun-26-2006

**Reported in :** (2006)(111)ECC196

**Judge :** M Ravindran

**Appellant :** Cce

**Respondent :** Raj Creators

**Judgement :**

1. These two appeals arise out of order in appeal dated 30<sup>th</sup> July, 2003 which set aside the order in original confirming the demand and imposing penalty. The revenue is in appeal against this order.
2. The issue involved in this case is the respondents have been denied modvat credit on the input GP Sheets which were allegedly not used in or relation to the manufacture of final product and were removed clandestinely and to make up the loss in production it was alleged that the respondent brought HR-CR sheets in the manufacture of final products. The learned Commissioner (Appeal) in his order in appeal has held that the statements of the supplier clearly indicate that the invoices which were issued to the respondents were indicating wrong description of the goods. Learned DR submits that in this case it was a clear issue where the respondent do not manufacture tractor parts with the GP sheets but could have manufactured the same only with HR-CR sheets. It is his contention that the appellant sold the input GP sheets after availing the modvat credit. He supports

the appeal by relying upon the order in original.

3. Learned advocate on the other hand submits that Division Bench of the Tribunal in the case of CCE, Chandigarh v. GDB Enterprises and Anr.

as reported as 2005 (67) RLT (678) (CESTAT-Del.) in an identical situation has come to the conclusion that Department has not proved that the appellants are not using GP sheets in the manufacture of OE parts.

4. Considered the submissions made by both sides and perused records. I find from the records that the main allegation against the respondents is that they have not received the GP sheets but only availed modvat credit on such GP sheets and removed them clandestinely. I also find from the record that there is nothing to indicate that respondent ever removed GP sheets from their factory clandestinely. I also note that the supplier had stated that there was error in the mentioning of description of goods on the duty paying documents. The Department has not brought on record any evidence contrary to refute the findings of Commissioner (Appeal).

5. Division Bench of the Tribunal in the case of GDB Enterprises and another (supra) at paragraph '5' & '6' has held as under: 5. We have heard both the sides and gone through the record. The respondents are admittedly engaged in the manufacture of motor vehicle parts and accessories including cylinders (for short OE parts). They are supplying as vendors, these parts to various OE manufacturers of the vehicles namely Punjab Tractors, H.M.T. Ltd. Maruti Udyog Ltd. So far as purchase of the GP sheets during the period in question referred above by the respondents from various registered dealers under duly duty paid invoices is concerned, the same has not been disputed by the Revenue. The allegations leveled by the Revenue against the respondents are that they had in fact disposed of GP sheets in the grey market instead of utilizing the same in the manufacture of OE parts and that they had only utilized HR/CR sheets in the manufacture of those parts and thereby wrongly availed higher modvat credit on the GP sheets. But in our view, there is no tangible evidence to substantiate these allegations against the respondents. The general opinion through letters supplied by the O.E. manufacturers named above to the department was that they supplied

the specification of the raw materials to their vendors including the present respondents, to be used by them in the manufacture of motor vehicle parts to be supplied to them and that the main raw material specified was HR/CR sheets. But that could not lead to an irresistible conclusion that O.E. parts supplied to them were manufactured only from CR/HR sheets and not from GP sheets by the respondents. No mechanical test was carried out by any of these manufacturers to whom the parts were supplied by the respondents to ascertain the details of the inputs used for the manufacture of the parts. The GP sheets had been used by the respondents after galvanizing in order to provide better quality of the parts to the OE manufacturers of vehicles.

6. The opinion furnished by the SAIL was only to this effect that normally GP sheets are not used in the manufacture of OE parts, rather CR/HR sheets are used. But this general information did not advance the case of the Revenue for want of any expert opinion on record to prove that OE parts cannot at all be made out of GP sheets. There is also no evidence to prove the clandestine disposal of GP sheets by the respondents as none from the market has come forward to admit the purchase of GP sheets during the period in dispute, from them.

6. The issue involved in the current appeal before me is squarely covered by the decision of the Division Bench in the GDB Enterprises case, against the revenue.

7. Accordingly, respectfully following the said decision, I do not find any reason for interfering in the impugned order, Department's appeals dismissed.

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