

**Anand Pipe Industries Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/43101](http://sooperkanoon.com/43101)

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

**Decided On :** Jul-12-2006

**Reported in :** (2006)(111)ECC78

**Judge :** T Anjaneyulu

**Appellant :** Anand Pipe Industries

**Respondent :** Cce

**Judgement :**

2. The assessee has availed CENVAT credit on the capital goods.

Simultaneously, the assessee has also claimed depreciation under Section 32 of the Income-tax Act, 1961 on the capital goods.

Subsequently, the assessee rectified the mistake by filing revised Income-tax returns. This has also been confirmed by Income-tax Department. Thus, as it stands the assessee had availed CENVAT credit but not depreciation on the value of the capital goods.

3. The Deputy Commissioner, Central Excise, Nashik who has adjudicated the show cause notice, dropped the demand but however, imposed penalty equivalent to CENVAT credit availed under Section 11AC of the Central Excise Act, 1944 read with Rule 13 of Central Excise Rules, 2002 and the interest under Section 11AB of the Central Excise Act, 1944.

4. Aggrieved by the same, the assessee had filed an appeal before the Commissioner (Appeals) for dropping the penalty. The department has filed another appeal for dropping the original demand of CENVAT credit.

The Commissioner (Appeals), Central Excise, Nashik who in turn upheld the order in original and dismissed the appeal filed by the assessee and allowed the appeal of the Department. Hence, the assessee came up in appeal before this Tribunal. The issue involved in the above appeal is squarely covered by the Tribunal's decisions in the case of (1) Shri Ghanshyam Auto Parts Pvt. Ltd. v. CCE, Aurangabad 2004 (178) ELT 163 (Tri. Mum) and (2) Abhishek Synthetics Pvt. Ltd. v. CCE, Hyderabad-III . It is observed in the case of Abhishek Synthetics Pvt. Ltd. v. CCE, Hyderabad-III The appellant cannot be denied both the benefits of availing the Modvat credit on capital goods and also the depreciation under the income-tax. If by inadvertence, the appellant had availed both the benefits and subsequently taken remedial action, the Revenue should not have any objection. The appellant has an option of either taking Modvat credit or claiming depreciation. Once an option is exercised, it is not irreversible. The benefit of Modvat credit under the Central Excise Rules cannot be denied merely on the ground that depreciation was claimed under the Income Tax in the Income tax return of the applicant even when he files the revised income tax return. This view has been expressed by the Customs and Central Excise Settlement Commission, Chennai in its Final Order No. 16/2002-C.E., dated 2.8.2002. The appellant had no intention to evade duty as the lapse appears to be due to inadvertence.

5. In view of the settled position of law, I am of the opinion that the original adjudicating authority was right in dropping the CENVAT credit demand but however, the penalty imposed is on the high side. This needs to be rectified. Having considered the facts and circumstances of the case, the penalty is reduced to Rs. 10,000/- (ten thousand). The appeal is allowed in part. Stay application is also disposed of accordingly.