

**Commissioner of C. Ex. Vs. Esteem Services**

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**SooperKanoon Citation :** [sooperkanoon.com/43383](http://sooperkanoon.com/43383)

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

**Decided On :** Aug-11-2006

**Reported in :** (2006)(112)ECC542

**Judge :** T Anjaneyulu

**Appellant :** Commissioner of C. Ex.

**Respondent :** Esteem Services

**Judgement :**

2. The issue involved in this appeal is that whether the assessee can avail rebate on the duty paid goods once he claimed drawback amount from the Customs Authorities.

3. The Commissioner (Appeals) has found that the refund claim made by the assessee was rejected as per Rule 5 of Cenvat Credit Rules, 2002, mainly on the ground that the appellants had first availed Cenvat Credit, then after, due export they have received drawback amount and they have reversed the drawback taken. Since the assessee have reversed the amount of Rs. 1709/- on account of drawback taken and therefore, they are eligible for refund in view of the ratio laid down in the Supreme Court decision in the case of Chandrapur Magnet Wires Pvt. Ltd. v. CCE and the High Court decision in the case of Hello Minerals Water (P) Ltd. v. UOI . On due consideration of the matter Rules 5 and 7 of the Cenvat Credit Rules, 2002, the Commissioner (Appeals), Central Excise, Pune has allowed the refund of Rs. 44,572/-which is admissible one. The contention of the

Department is that the decision relied upon by the Commissioner (Appeals) are not applicable and on the other hand the assessee is not sanctioned the refund of Cenvat credit, since they claim drawback allowed under the Customs and Central Excise duties drawback Rules, 1995 or claim a rebate of duty under the Central Excise Rules, 2002 in respect of such duty. In view of the decisions - (i) Powerflow Ltd. v. Collector of Central Excise, Bangalore This is not a case of similar availment modvat credit and drawback since the drawback has been reversed. The principle laid down in the Customs matter is squarely applicable. Thus, 1 see nothing erroneous in the impugned order passed by the Commissioner (Appeals). Therefore, revenue appeal is dismissed for want of merits.

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