

**Cce Vs. Somex India**

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

**Decided On :** Aug-29-2007

**Judge :** P Das

**Appellant :** Cce

**Respondent :** Somex India

**Judgement :**

1. Revenue filed this appeal against the Order-in-appeal No.242(MPL)/CE/JPR-1/2005 dated 5.8.2005 passed by the Commissioner (Appeals), Central Excise, Jaipur.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of electric cables classifiable under sub-heading No. 8544.90 of the Schedule to the Central Excise Tariff Act, 1985. They availed credit on inputs used in the manufacture of electric cables cleared on payment of duty. The Hon'ble Supreme Court in the case of Technoweld Industries held that the process of drawing of wire from wire rods does not amount to manufacture under the definition of Section 2(f) of Central Excise Act, 1944. Therefore, show cause notice was issued proposing to recover Cenvat credit on inputs wire utilized for the process of electric cables. The adjudicating authority confirmed the demand of duty and imposed penalty. The Commissioner (Appeals) set aside the adjudication order.

3. The learned D.R. reiterates the grounds of appeal filed by the Revenue. He submits that the duty paid on electric cables is mere deposit and, therefore, the credit is liable to be recovered from the respondents.

4. The learned advocate on behalf of the respondent submits that the issue is squarely covered by the decision of the Tribunal in the case of CCE, Jaipur-I v. Somex (India) vide Final Order No. 486/07-SM dated 6.2.2007. He further submits that the credit is not deniable in view of the Taxation Law (Amendment) Act, 2006. He reiterates the findings of the Commissioner (Appeals).

5. After hearing both sides and on perusal of the record, it is seen from Section 39 of the Taxation Law (Amendment) Act, 2006 that duty paid on wire drawing unit shall be allowed Cenvat Credit during the period 29.5.2003 to 8.7.2004. I find that the Tribunal in the case of M/s. Somex (India) vide Final Order dated 6.2.2007 rejected the appeal filed by the Revenue following the decision of the Tribunal in the case of Shivali Udyog (I) Ltd. v. CCE, Raipur 2006 (204) ELT-94 (Tri.-Del).

The relevant portion of the said case is reproduced below: The applicants are manufacturing H.B. Wire and availing the credit in respect of duty paid on the raw-material i.e. wire rods. After converting the wire rods into wire, the applicants are clearing the same on payment of appropriate duty. The payment of; duty is not disputed by the revenue, therefore, pre-deposit of whole of duty is waived for hearing of the appeal.

We find that this issue is already settled by the Tribunal in the case of Sri Venkateswara Co. v. CCE, Coimbatore reported in 2006 (195) ELT 304 whereby such demand was set aside after taking into consideration that manufacturer has paid more duty than the credit and the Tribunal in the case of CCE, Inodre v. M.P. Telelinks Ltd. reported in 2004 (178) ELT 167 also set aside the demand on the same ground. Further we find that the Hon'ble Supreme Court in the case of CCE v. Naramada Chematur Pharmaceuticals Ltd. reported in 2005 (179) ELT 276 dismissed the appeal of the revenue, by taking into consideration the facts of the case, that Modvat is equivalent to the duty paid by the assessee. Hon'ble Supreme Court held as under: In the present case also revenue wants to deny the credit on the ground that final product is not dutiable whereas the appellant paid duty which

is more than the credit.

In view of the above discussion, the impugned order is set aside and the appeal is allowed.

6. In view of the above, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

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