

**Aee, Pcc Poles Vs. Cce**

**Aee, Pcc Poles Vs. Cce**

**SooperKanoon Citation :** [sooperkanoon.com/46205](http://sooperkanoon.com/46205)

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

**Decided On :** Sep-24-2007

**Reported in :** (2007)(123)ECC144

**Judge :** P Das

**Appellant :** Aee, Pcc Poles

**Respondent :** Cce

**Judgement :**

1. In this case, it has been alleged that during the month of June to October, 1994, the appellant availed modvat credit on endorsed original and duplicate copy of the invoices issued by various depots in contravention of Rule 57G of the Central Excise Rules, 1944. Both the authorities below disallowed the modvat credit on the ground that the same was taken on the strength of endorsed invoices which are not valid documents for the purpose of taking credit. Zenith Weaves Pvt. Ltd. v. CCE, Surat 2004 (177) E.L.T. 251 (Tri.-Mumbai) held that invoices endorsed by the depot of the same manufacturer and not by in between receiver of the raw material, the modvat credit cannot be denied. The learned D.R. relied upon the larger Bench decision of the Tribunal in the case of Balmer Lawrie and Co. Ltd. v. CCE, Kanpur . I find that Division Bench of the Tribunal in the case of Balmer Lawrie and Co. Ltd. v. CCE, Kanpur .

held that credit having taken on invoices issued by the depot of the same manufacturer, the larger bench decision of the Tribunal in the case of Balmer

Lawrie & Co. Limited is not applicable. The relevant portion of the said decision is reproduced below: 7. We have considered the submissions of both the sides. As regards the first issue, we find that the endorsement of the invoices is by the depot of the same manufacturer. The Tribunal in the case relied upon by the appellant has held that when there is no in between buyer; f the inputs and the endorsement is by the manufacturer's own depot, the ratio of the Larger Bench decision would; not be applicable. As regards the other invoices, it is seen that though the address on the invoices is that of their Kim factory, the said invoices mentioned that the inputs are to be delivered at the Surat factory. In these circumstances, the Tribunal's decision in the case of Lawrsen & Toubro Ltd. holding that when the invoices have been issued in the name of the office but the goods are received in the factory, the same would constitute proper modvatable documents, have to be applied. As regards the Modvat credit taken on the basis of certificates issued by the Superintendent prior ;to 31.3.1994, it is seen that the notification itself provides for taking credit on the basis of such documents provided the credit is taken before 30.6.1994. As such, we do not find any lapse on the part of the appellant to avail the credit on the basis of the said documents especially when there is no doubt or dispute about the receipt of the inputs by the appellants in their factory, their utilization in the manufacture of the final product and clearance of the final product on payment of duty.

8. We also take note of the Larger Bench decision in the case of Kamakhya Steels Ltd. v. CCE wherein the Tribunal, after taking note of the Board's circular, has observed that the minor procedural lapses, if any, should not be made the basis for denial of the benefit of the Modvat credit, if the assessee's jurisdictional Assistant Commissioner is otherwise satisfied about the receipt of the inputs. In the absence of any doubt to the above fat, we are of the view that the impugned orders are liable to be set aside.

I have seen that in this case, there is no dispute that the appellant availed credit on the endorsed original and duplicate copies of the invoices issued by the various depots of the manufacturer. The learned advocate has taken the Bench to the copies of the invoices as contained in the paper book. There is no dispute that inputs are duty paid and used in the manufacture of the finished products. It is held

by the Hon'ble High Court of Bombay in the case of Marmagoa Steel Ltd. v. Union of India 2005 (192) ELT 82 (Bom.) with reference to Rule 57G of the Central Excise Rules, 1944 held that what is required to be established is that the goods used as inputs are duty paid and the inputs have been used in the manufacture of finished products 4. In view of the above, the impugned orders are not sustainable.

Accordingly, the impugned orders are set aside and the appeal is allowed with consequential relief.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**