

**Monica Electronics Ltd. Vs. Collector of Central Excise**

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

**Decided On :** Nov-15-1994

**Reported in :** (1995)(75)ELT440TriDel

**Appellant :** Monica Electronics Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. M/s. Monica Electronics Ltd., New Delhi had availed modvat credit of Central Excise duty on picture tubes which is an input used for the manufacture of television sets. In the course of the visit by the Central Excise Officers it was found that the company had taken such credit of 305 picture tubes which were found to be defective and irreparable. On the basis of the department's view that the credit of such goods would be contrary to the rules for the reason that they were not used in the manufacture of final products, a show cause notice was issued to the company proposing the recovery of a sum of Rs. 3,05,000/- being an amount equal to the duty and also imposition of penalty. After considering the cause shown by the company and hearing the Additional Collector of Customs confirmed the demand for duty and imposed a penalty of Rs. 7,500/-. This appeal is against that order. It was the argument of Shri P.S. Bedi, Consultant for the appellant that picture tubes had become damaged after being taken for manufacture of television sets. They therefore, would have to be considered to be waste arising during the course of manufacture of final products.

Therefore, in terms of Sub-rule of Rule 157(d)1, a credit was correctly taken and could not be denied. He relied upon a decision of this Tribunal in Collector of Central Excise, Chandigarh v. Ludhiana Bottling Company 2. Shri M.K. Jain, learned SDR adopted the reasoning of the Additional Collector of Central Excise. He argued that credit could not be taken on the inputs since they have not gone into the manufacture of final products.

3. The ratio in the Ludhiana Bottling decision,... "input which are in the nature of discreet if [sic], articles like Crown Corks when damaged or rendered unfit for use during the manufacturing of the final product will constitute waste which would no doubt be comprised of a part of the total quantity of the particular duty paid input received for the manufacture". The facts in the appeal before us, have to be distinguished. On the basis of the submissions it is not possible to say that the picture tubes become unusable in the course of the manufacture of the final product. The extract of grounds of the appeal would make it clear : "The appellant issued the picture tubes to the production floor for the manufacture of TV's. Some of these picture tubes got spoiled by way of either breakage of the tubes, or scratches on the shell or other defects which rendered picture tubes unpreparable." The issue of components to the shop floor is a stage anterior to the component actually going into the stream of manufacture. Mere issue to the shop floor does not even necessarily mean that the components have reached shop floor. The damage or breakage may have taken place, for example, when, in pursuance of the issue, the picture tubes, were being taken down from the storage point.

Such damage could also have occurred in the process of transportation of the picture tubes to the shop floor. In our view, the expression "during the course of manufacture" would not include stages prior to the point at which actual manufacturing operation of the final products commenced. It has therefore, held that damaged picture tubes cannot be considered waste within the meaning of Rule 57(b)1 and the credit taken on them has therefore to be reversed. To this extent, we confirm the order of the Additional Collector. However, his order does not indicate the reasons for the imposition of penalty under Rule 173Q. There is no allegation that the appellant at that set in the manner that it did otherwise than in

the bona fide belief that it was entitled to [get].

The facts of the case therefore, do not disclose the ground for imposition of penalty. The penalty imposed on the appellant is set aside. The appeal is disposed of accordingly. Consequential relief if any, will flow to the appellant.

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