

**C.C.E. Vs. Shankar Varnish and Phenyle**

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**SooperKanoon Citation :** [sooperkanoon.com/8483](http://sooperkanoon.com/8483)

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

**Decided On :** May-31-1995

**Reported in :** (1995)(79)ELT163TriDel

**Appellant :** C.C.E.

**Respondent :** Shankar Varnish and Phenyle

**Judgement :**

1. This is an appeal against the order of the Collector of Central Excise (Appeals) filed by the Collector of Central Excise.

2. The respondent has not appeared for hearing or sought adjournment.

Therefore, the matter is being decided on merits after hearing the appellant.

3. The Assistant Collector of Central Excise had allowed Modvat credit under Rule 57H of the Central Excise Rules on the inputs consumed in the manufacture of finished goods lying in stock as on 15-9-1989.

Subsequently the Assistant Collector observed that Rule 57H has been amended prior to this date and credit could not be allowed on the inputs contained in the stock of finished products. Therefore, after issuing show cause notice, and considering the assessee's reply, he confirms the demand. In appeal Collector held that once the credit has been allowed by the Assistant Collector which could not be reversed without recurrence of Section 35E of the Act. This appeal is against that order. The provision of [Rule 57(9)] are clear that where the credit has

been taken on account of an error, omission or [mis-intrepretation] on the part of the officer, credit can be recovered under that Section. In this case, the credit was taken in consequence of an error by the Assistant Collector with regard to the scope of Rule 57H. I am not able to agree that in this case, Section 35E would have to be invoked as the appellant points out that the provision of Section 35E would apply whether order or decision in question is passed by the officer in his capacity as an adjudicating officer. It has been held in decisions of this Tribunal that once the conditions in Rule 57H are satisfied, the Assistant Collector has no option but to allow the credit.

4. It cannot be said that order allowing the credit was passed in the capacity as adjudicating authority. Apart from this, when there is clear and specific provision in Rule 157(9) itself for the proper officer to recover the credit, harmonious construction of both provisions would exclude cases covered under this Rule from the purview of Section 35E.5. In the circumstances, I allow the appeal, set aside the order of Collector (Appeals) and restore the order of the Assistant Collector.

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