

**General Engineering Works Vs. Commr. of Central Ex.**

**General Engineering Works Vs. Commr. of Central Ex.**

**SooperKanoon Citation :** [sooperkanoon.com/9300](http://sooperkanoon.com/9300)

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

**Decided On :** Mar-25-1996

**Reported in :** (1996)(86)ELT314TriDel

**Appellant :** General Engineering Works

**Respondent :** Commr. of Central Ex.

**Judgement :**

1. This appeal pertains to the denial of modvat credit amounting to Rs. 11423.
2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of steel wire and Auto Tyre Bead Wire. For manufacture of these two items, they procured from the market, on payment of duty, wire rods and wire. In the instant case, the appellants cleared steel wire for Auto Tyre Beads under gate pass No.013, dated 5-4-1993. The goods got wet in transit. The goods were cleared for transport to Chandigarh; that on the way, the truck broke down and their goods spoiled [and] they had to receive back all the goods. On receiving the goods, the appellants took modvat credit of duty. The Department alleged that modvat credit of duty was not available to the appellants on the ground that the appellants had not intimated to the Department, the receipt of duty-paid goods back to their factory.
3. Shri R.C. Gupta, the learned Advocate appearing for the appellants submitted that the items received back were wires which were declared by them as inputs in the declaration filed under Rule 57G. He submitted that there are a number of

judgments of the Tribunal which clearly held that modvat credit will be admissible on such items which were declared in the declaration under Rule 57G as inputs. He submitted that the goods should be treated as inputs and therefore, they were rightly entitled to take modvat credit of duty on these inputs. The learned Counsel submitted that there was no question of invoking either Rules 51A, 173H or 173L, as the inputs were recorded in the statutory records like RG 23A, Part I; that this statutory record always forms a part of RT 12 returns and thus the intimation of receipt of the goods back was sent to the Department. He submitted that the appellants by a special letter, had intimated to the Department that they will be receiving the goods rejected by the customers and taking them inside their factory for use they sought permission from the Department. Relying on the decision of the Tribunal in the case of *Fimco Elecon (India) Ltd. v. C.C.E.* reported in 1991 (56) E.L.T. 654, the learned Counsel submitted that merely because some components had gone outside on payment of duty and returned, they do not cease to be notified goods and will be eligible for modvat credit. Relying on the judgment of the Tribunal in the case of *Alcobex Metals Ltd. v. C.C.E.*, reported in 1993 (68) E.L.T.146, the learned Counsel submitted that the defective goods cleared by customers under Rule 57F(1)(ii) received by the appellant under cover of gate pass on payment of duty and remelted and used as inputs in the manufacture of final products and modvat credit shall be available to such defective goods being used as inputs. Referring to the decision of the Tribunal in the case of *Milliard Tubes Ltd. v. C.C.E.*, Chandigarh reported in 1994 (74) E.L.T. 342 (Tribunal), the learned Counsel submitted that defective inputs returned to original manufacturer after reversal of modvat credit and some of such defective inputs returned after repair/reprocessing under Rule 173H without payment of duty but under Gate Pass which contained distinct remark and reference to the original duty paid Gate Pass, Modvat credit taken on the basis of such endorsement is valid. Referring to the decision of this Tribunal in the Case of *Steriware Pvt. Ltd. v. C.C.E.*, New Delhi reported in 1994 (74) E.L.T. 348 (Tribunal), the learned Counsel submitted that the Tribunal in this case had held that return of duty-paid goods by transporter in the absence of Sale Tax Form D-3 intimation filed but permission under Rule 51A of the Central Excise Rules, 1944 not obtained no duty can again be charged on the same duty-paid goods and that mere procedural irregularity in not obtaining the

permission under Rule 51A cannot have the effect of subjecting the same goods to pay duty second time.

Referring to the judgment of this Tribunal in the case of Sterlite Industries (I) Ltd. v. C.C.E., Pune reported in. 1995 (75) E.L.T. 823 (Tribunal), the learned Counsel submitted that this Tribunal held that even if it is treated as manufacture, so long as duty-paid copper rods have been utilised in the manufacture of copper wires, modvat credit would be admissible. The learned Counsel summed up his arguments saying that the Asstt. Collector while passing his order-in-original had clearly stated that the appellants had produced the records of receipt of the defective goods in the factory of the appellants. He concluded that having regard to the decisions of the Tribunal in the cases cited supra, the appeal may be allowed.

4. Shri P. Das, the learned SDR opposing the arguments of the Counsel for the appellants submitted that no intimation about the receipt of the goods was sent to the Department; that no evidence was produced by the appellants in the form of any evidence or notice to the Department that the damaged goods were received back. The learned SDR submitted that most of the decisions cited and relied upon by the appellants pertained to the goods rejected and not the goods damaged in the process and transport and received back. The second point that was brought by the learned SDR was that modvat credit on the G.P. 1 could not be taken by the appellants when the G.P. 1 was not in the name of the appellants, nor did the gate pass contained an endorsement nor were the goods rejected and therefore, there was no question of allowing modvat credit on the strength of such gate pass. He therefore, submitted that the lower authorities have rightly denied the modvat credit to the appellants.

5. Heard the submissions of both sides. The first issue for determination is whether the goods were received back and if so, what was the evidence produced by the appellants. From the evidence on record, I find that there is a letter written by the appellants in 1988 that they had sought permission of the Asstt. Collector for receiving back the rejected goods. In the instant case, I find that the facts are a little bit different because here is not the question of receiving back the rejected

goods but it is the case pertaining to receiving back of damaged goods in transit. I also observe that while submitting RT-12 monthly returns the appellants had informed to have taken credit on the strength of that gate pass. There is no dispute that the goods were not received back or were not declared as inputs in the declaration filed under Rule 57G. In case these goods are treated as inputs, then even if manufactured in the same factory and duty was paid by the same person, modvat credit was eligible on such goods. These goods remain specified goods for the purpose of Rule 57A, they do not lose the character of specified goods. If this view is accepted, then there is no question of sending any intimation to the Department as Rule 57A permits taking modvat credit on inputs as and when such inputs are received under the cover of gate pass. No doubt, the gate pass was there and therefore, I hold that in the circumstances that the goods were declared as inputs; that the duty was paid on these inputs while sending them out of the factory, modvat credit will not be admissible.

6. The second point that was forcefully agitated by the learned SDR that the gate pass was not in their name and therefore, modvat credit could not be taken. In the preceding paragraphs, I have already observed that the goods were declared as input in the declaration filed under Rule 57G; that there is no dispute about the payment of duty on these goods while being cleared simply because the goods had to be received as damaged in transit, will not change the duty-paid character of these goods. Once it is accepted, thus the question of the appellants' name not being shown as consignees is immaterial in the special circumstances of the case.

7. Having regard to all the facts and circumstances of the case and the discussions above, I hold that modvat credit was rightly taken by the appellants. In this view of the matter, the impugned order is set aside and the appeal is allowed. Consequential relief, if any, shall be admissible to the appellants in accordance with law.