

**Commissioner of C. Ex. Vs. Nova Vision Electronics P. Ltd.**

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

**Decided On :** Apr-30-1996

**Reported in :** (1996)(87)ELT430TriDel

**Appellant :** Commissioner of C. Ex.

**Respondent :** Nova Vision Electronics P. Ltd.

**Judgement :**

1. This is an appeal filed by the Department against the Order-in-Appeal No. 1999-CE/MRT/95, dated 17-7-1995 passed by the Commissioner (Appeals), Customs and Central Excise, Ghaziabad. When the matter was posted for final hearing on 16-4-1996, none appeared on behalf of the respondents in spite of the fact that notice has been issued to them. On going through the issue involved in this case, I felt that the matter can be disposed of even in the absence of the respondents. The point to be considered in the instant case is whether the assessee can avail Modvat credit in respect of one commodity while availing full exemption respect of another commodity under Notification No. 175 of 1986-C.E., dated 1-3-1986. The Assistant Collector has held that Modvat credit is not admissible since the assessee availed of exemption in terms of Notification No. 175/86 though it was in respect of another input. On the other hand the Commissioner (Appeals) has observed that the assessee availed of exemption in respect of twd-in-one Tape recorder and Modvat credit on wired chassis. He observed that since the items are falling under different headings, Modvat credit cannot be denied in respect of wired chassis following the ratio of the decision of this Tribunal in the case of C.C.E.,

New Delhi v. Delhi Kanodia Tin & Drum Factory reported in 1994 (72) E.L.T.578 wherein it has been held that SSI exemption under Notification No.175/86, dated 1-3-1986 and Modvat credit could be availed of simultaneously on the goods having different tariff headings.

2. While reiterating the grounds, Shri Ramsaran, the learned Departmental Representative submitted that it was not permissible to avail Modvat credit in respect of one commodity while availing SSI exemption in respect of other commodity and this issue has been decided by the Tribunal in the case of Kharia Cement Works v. C.C.E. reported at 1989 (42) E.L.T 696 (Tribunal). Further the very issue had come up before the Larger Bench of the Tribunal in the case of Kamani Foods v.C.C.E. reported in 1995 (75) E.L.T. 202 wherein the Larger Bench has held that the assessee cannot avail Modvat credit in respect of one item while availing [SSI] exemption in respect of other item and accordingly, the view expressed by the Tribunal in the case of M/s.

Kharia Cement Works was affirmed. Shri Ramsaran, submitted that since the Larger Bench of the Tribunal has taken a view that Modvat credit is not permissible while availing in terms of Notification No. 175/86, the Commissioner (Appeals) erred in accepting the plea of the appellants.C.C.E.New Delhi v. Delhi Kanodia Tin & Drum Factory cited supra, the Tribunal has come to the conclusion that Modvat credit is permissible while availing SSI exemption in respect of other commodities following the earlier decisions. The decisions referred to in that case are as follows :-Faridabad Tools Pvt. Ltd. v. Collector Shyam Sunder U. Nichani v. Assistant Collector - 1985 (22) E.L.T. 751 (Kar.) Damodar Keru Naiknaware v. Collector - 1985 (22) E.L.T. 212 (Tribunal) Collector v. Sudhakar Litho Printers - 1988 (36) E.L.T. 346 (Tribunal) One of the cases which was followed by the Tribunal in arriving at conclusion is based upon the ratio of the decision in the case of Faridabad Tools Pvt. Ltd. v. C.C.E. cited supra. The Department has filed an appeal against the order passed by the Tribunal in the case of Faridabad Tools Pvt. Ltd. before the Hon'ble Supreme Court and the Supreme Court has dismissed the appeal. Accordingly, the view expressed by the Tribunal in the case of Faridabad Tools Pvt. Ltd. has become final and the same has been followed by the Tribunal in the case of C.C.E., New Delhi v. Delhi Kanodia Tin & Drum Factory

which was followed by the Commissioner (Appeals) in the impugned order. In the case of Faridabad Tools Pvt. Ltd., the question was whether the respondents who were availing the benefit of Notification No. 175/86, dated 1-3-1986 claimed in respect of Dies where Modvat credit availed of in respect of Raw Aluminium Castings falling under sub-heading 8414.00 of Central Excise Tariff Act, 1985. The Tribunal following the earlier two decisions namely, Swaraj Paint Industries v. Collector reported in 1991 (52) E.L.T. 594 and Abhilash Rubber Products v. Collector reported in 1991 (56) E.L.T. 168 had held that since the respondents had claimed the benefit of Notification No. 175/86 in respect of Dies whereas they had claimed Modvat benefit in respect of Raw Aluminium Castings under sub-heading 8714.00. Accordingly they were not claiming both benefit in respect of the same item. Therefore, they should be given full benefit of the exemption as would be available otherwise as the Modvat credit is not being availed of. Since this view has been affirmed by the Supreme Court, I accept the plea of the respondents holding that the respondents are entitled to avail of Modvat credit in respect of wired chassis though they availed exemption in respect of tape recorder since they were falling under different headings. In that view taken, I uphold the impugned order and in the result, the appeal filed by the Department is hereby dismissed.

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