

**Collector of Central Excise Vs. Noble Explochem Ltd.**

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

**Decided On :** Aug-08-1996

**Reported in :** (1996)(88)ELT372Tri(Mum.)bai

**Appellant :** Collector of Central Excise

**Respondent :** Noble Explochem Ltd.

**Judgement :**

1. This appeal by the Department is directed against the Order -in-Appeal No. 386/App/IND/93, dated 13-5-1993 of the Collector of Central Excise (Appeals), Indore setting aside the Order-in-Original No. 14/Adj/90/AMT, dated 6-11-1990 of the Asstt. Collector, Amravati directing the Respondents to reverse Modvat credit of Rs. 81,875.39 on the ground that the inputs when received were not accompanied by the Gate Passes and even then entries were made in RG 23A Part I and there too, complete details were not given. The Collector (Appeals) however held that the order of the Asst. Collector was not sustainable inasmuch as the same was passed without issuance of Show Cause Notice and was merely in the nature of confirming the order of the Superintendent of Central Excise, who had denied availment of such credit and further held that mere entry was made in RG 23A Part I, when the inputs were received and all other relevant entries in RG 23A Part II were made subsequent to receipt of proper documents. In his opinion some technical flow would not disentitle the Respondents in availing of the credit.

4. The order of the Asst. Collector has been set aside firstly on the ground that the same is passed without issue of any Show Cause Notice.

The order denying credit would have even otherwise stood vitiated as the initial order was by the Superintendent, who had no authority to deny the Modvat credit. The defect has however been rectified by passing of the order by the Asst. Collector. Even then, for this purpose Show Cause Notice ought to have been issued. No such notice is issued and there is no evidence that Notice was waived. The order of the Collector (Appeals) on that count does not suffer from any infirmity as to warrant any interference.

5. Even on merits, there is no statutory requirement that inputs when received are accompanied by the relevant documents and there could be no cause for denial of the Modvat credit if the documents are received subsequently till such documents are related to the inputs received and it is possible for the Excise Authority to verify the same. This has been duly decided by this Bench in Collector v. Bhartiya & Dalai Paints (P) Ltd. -1992 (62) E.L.T. 549 (Tribunal). The Tribunal decisions referred to by the Collector (Appeals) also go to show that some minor procedural irregularities could not deprive the party from availing the Credit.

6. In the result, there is no justifiable ground to interfere with the order. The appeal is rejected.

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