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(2010) 04 P&H CK 0481

High Court Of Punjab And Haryana At Chandigarh

Case No: C.E.C. No. 16 of 2003

Commissioner of Central Excise	APPELLANT
Vs	
Manoj Enterprises	RESPONDENT

Date of Decision: April 5, 2010

Citation: (2010) 256 ELT 348

Hon'ble Judges: Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ashutosh Mohunta, J.
The Revenue has impugned the order (Annexure P-3) passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (for short "the Tribunal") dated 18-9-2002, vide which the order passed by the Commissioner (Appeals) was upheld and the respondent No. 1 was held entitled to claim modvat credit on the inputs as per certificate issued by Central Excise Range Officer.

2. The Department claims the following question of law arise for consideration by this Court:

Whether the benefit of an exemption Notification which is dependent upon fulfillment of certain conditions, can be granted and benefit allowed to the assessee, even when the conditions which must be fulfilled before the deemed credit can be taken, have not been fulfilled?

3. A perusal of the facts in the present case shows that the respondent-assessee had taken modvat credit on the inputs used by him. He was allowed to take the credit. However, the case of the Department was that since the assessee has only partly discharged his duty liability, therefore, unless and until he deposits the entire duty, he is not liable to claim modvat credit. As the respondent-assessee had already

received the modvat credit, therefore, the Department intended to deny the credit and to recover the credit already taken by the manufacturer.

4. A perusal of the facts shows that whatever inputs were used by the manufacturer, he had availed of the modvat credit. In case, any duty was yet to be paid by him, then the Department was free to proceed for recovery of the duty against the manufacturer. This is what the Commissioner (Appeals) as well as the Tribunal have held.

5. In view of the above, the question as posed in this appeal is decided against the Revenue and in favour of the assessee. The orders passed by the Commissioner (Appeals) and the Tribunal are upheld and the appeal is dismissed.