

(2011) 04 P&amp;H CK 0364

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Central Excise Appeal No. 10 of 2011

Commissioner of C.EX., Ludhiana

APPELLANT

Vs

Khalsa Cotspin (P) Ltd.

RESPONDENT

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**Date of Decision:** April 27, 2011**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35(G)
- CENVAT (Credit) Rules, 2004 - Rule 3(5)

**Citation:** (2011) 270 ELT 349**Hon'ble Judges:** Ajay Kumar Mittal, J; A.K. Goel, J**Bench:** Division Bench**Final Decision:** Dismissed

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**Judgement**

Adarsh Kumar Goel, J.

This appeal has been preferred by the revenue u/s 35G of the Central Excise Act, 1944 against the order dated 24-6-2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short "the Tribunal") raising following substantial questions of law :-

1. Whether the judgment and order passed by the Tribunal is proper and legal?
  2. Whether the Tribunal was correct in holding that the terms capital goods as such occurring in Rule 3(5) of the Cenvat Credit Rules, 2004 refers to only unused cenvat capital goods in dismissing the appeal filed by the appellants?
  3. Whether the duty is payable under Rule 3(5) of Cenvat Credit Rules, 2004 on the cenavated capital goods when the same are sold as capital goods?
2. The assessee purchased capital goods and availed cenvat credit thereon. The said goods were thereafter sold. The assessee claimed that cenvat credit was not liable to be reversed while clearing used capital goods on which no central excise duty was attracted. The Adjudicating Authority issued a show cause notice on the ground that

when the goods were cleared without payment of excise duty, the cenvat credit already taken was required to be reversed. However, considering the reply of the assessee, the Adjudicating Authority dropped the demand which view has been upheld by the Commissioner (Appeals) as well as by the Tribunal. The Tribunal observed :-

I have carefully considered the submissions from both sides. In the present case, undisputedly, the capital goods have been installed in the premises of the respondents and were put to use. The phrase cleared "as such" has been interpreted by the Tribunal in the case of Salona Cotspin Ltd. v. CCE, Salem reported in 2006 (201) E.L.T. 592 wherein it has been held that the goods removed after use cannot be treated as cleared "as such". Similarly, in the case of Madura Coats Ltd. has held that the capital goods removed after putting them to use cannot be held as removed "as such." This decision stands upheld by the Hon'ble High Court of Mumbai. In view of the above, I do not find any merit in the appeal challenging the concurrent finding of the Commissioner (Appeals) and the original authority which are in favour of the respondents.

3. We have heard learned counsel for the appellant.

4. Learned counsel for the appellant submits that mere keeping the capital goods and putting them to same use is not enough to exclude the requirement of reversing cenvat credit under Rule 3(5) of the Cenvat Credit Rules, 2004 (for short "the Rules") as the said provision applies if the goods are as such. Only if the goods are sold as scrap as unserviceable, the cenvat credit may not be required to be reversed.

5. We are unable to accept this submission.

6. The assessee having validly availed cenvat credit, same is required to be reversed only if goods were cleared in the same position without payment of excise duty. In the present case, it has been held by the Tribunal that goods were not cleared in the same position but after having been used and in such situation Rule 3(5) of the Rules will not apply.

7. No substantial question of law arises. The appeal is dismissed.