

## Akshay Steel Works Pvt. Ltd. Vs Union of India and Others

**Court:** Jharkhand High Court

**Date of Decision:** July 19, 2013

**Acts Referred:** Central Excises and Salt Act, 1944 â€” Section 35F

**Citation:** (2014) 304 ELT 518 : (2013) 22 GSTR 329 : (2013) 41 STT 95

**Hon'ble Judges:** Prakash Tatia, C.J; Aparesh Kumar Singh, J

**Bench:** Division Bench

**Advocate:** Sumeet Kr. Gadodia and A.K. Mahato, for the Appellant; Deepak Roshan, for the Respondent

### Judgement

1. Heard counsel for the parties. The petitioner's application for exemption from the condition of pre-deposit was rejected by the Commissioner,

(Appeals), Central Excise and Service Tax, Ranchi. However, the petitioner was permitted to comply with the pre-deposit u/s 35F of the Central

Excise Act. The petitioner's contention is that petitioner reversed the amount of Rs. 21,58,103/- and also has given break up of other tax including

cess. Petitioner gave this information along with copy of the Form-RG 23A Part II vide petitioner's letter dated 21.2.2012. According to the

petitioner, petitioner was entitled to adjustment of this credit entry against the condition of pre-deposit and, therefore, he immediately complied

with the order of the Appellate Tribunal and intimated so to the Appellate Tribunal. In-spite of such communication, which was duly received and

which has been duly admitted in the counter affidavit filed by the respondents, the Appellate Authority dismissed the petitioner-appellant's appeal

mainly on the ground that the petitioner failed to deposit the amount as required u/s 35F of the Central Excise Act.

2. Learned counsel for the petitioner further submitted that such adjustment is permissible in the view taken by the Customs, Excise and Service

Tax Appellate Tribunal, West Zonal Bench, Mumbai, Court No. 1 in the case of Finolex Cables Ltd. Vrs. Commissioner of Central Excise, Pune-

I, copy of which has been placed on record as Annexure-8. The same view has been taken by the CEGAT, Court No. 1, New Delhi in the case

of 1996 (83) ELT 396 . Even the Allahabad High Court in the case of India Casting Company Vs. CEGAT, has taken the same view.

3. Learned counsel for the respondents submitted that as per Rule-3 of the Cenvat Credit Rules, 2004, such credit can be allowed for the

purposes mentioned in Sub-Rule (1) of Rule 3 of the Cenvat Credit Rules, 2004 and, therefore, no other adjustment is permissible. Learned

counsel for the respondents also submitted that the said rule is in consonance with Section 35F of the Central Excise Act.

4. We have considered the submissions of learned counsel for the parties and perused the facts of the case as well as laws relied upon the parties.

Rule 3 of the Cenvat Credit Rules, 2004 allows an assessee to take the benefit of his credit under any of the category as mentioned under Sub-

Rule(1) of Rule 3 of the Cenvat Credit Rules, 2004. We are of the considered opinion that this is not a provision, which prohibits the assessee to

adjust the said credit against its liability created by either order which is sought to be challenged in appeal requiring the deposit of the amount u/s

35F of the Central Excise Act. In view of the above reasons, we are of the considered opinion that the petitioner was entitled to have this

adjustment of his credit amount against his liability u/s 35F of the Central Excise Act.

5. The order, by which the petitioner's appeal was rejected dated 4.9.2012, also appears to be non-speaking order. The Commissioner, Appeal

did not even consider the petitioner's contention and the plea that the petitioner has already deposited the amount by way of adjustment so as to

discharge his liability u/s 35F of the Central Excise Act. Be that as it may, since we are of the view that such adjustment is permissible in law,

therefore, this writ petition is allowed and the order dated 4.9.2012 (Annexure-5) is set aside. The petitioner's appeal is competent, which may be

dealt with in accordance with law by the Appellate Authority.