

EMPTY VESSELS MADE THE MOST SOUND

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Dutiability on empty containers (be it drums, barrels or any other packing materials) has been a long drawn issue for years. The Hon'ble Supreme Court in one of its latest land mark decision in the case of CCE Vs M/s. West Coast Industrial Gases Ltd., in the Civil Appeal No.2099 of 1999 has made the truck loads of show cause notices issued by the department on the said issue into a mere stationery.

The issue is quite interesting one which is worth a brief narration about its origin and voyage. The Hon'ble Tribunal in the case of M/s. IOL Vs CCE as reported in 1993 (68) ELT 624 (Tri.) has decided that there is no requirement of any reversal of the then MODVAT credit on the empty containers on which inputs have been received. The question before the Hon'ble Tribunal in the said case was that whether there is any requirement of reversal of MODVAT credit attributable to the cost of the containers, because of the fact that such containers do not go into the manufacture of the final products and also such containers are sold for a consideration as scrap. The Hon'ble Tribunal categorically laid down the ratio that any such reversal is unwarranted. Interestingly, in the case of M/s. West Coast Industrial Gases Vs CCE, Cochin as reported in 1996 (83) ELT 358 (T), the Hon'ble Tribunal took a diametrically opposite view that even though there is no requirement of any reversal of MODVAT credit on the cost of the containers, duty has to be paid on the sale value of the scrapped empty containers, treating the activity of emptying the inputs from the containers as a manufacturing activity. The above said CEGAT

judgement was subsequently recalled vide Miscellaneous Order No.467/98 dated 6.8.98 on Rectification Of Mistake (ROM).

The Department came out with a Circular No.449/15/99-Cx. dated 23.3.1999 wherein the Board has accepted and decided not to demand any duty on waste packages and containers when cleared from the factory of the manufacturers after availment of MODVAT credit. In a parallel attempt the department filed an appeal against the above mentioned CEGAT's order in the case of M/s. West Coast Industrial Gases in the Hon'ble Supreme Court and the appeal was admitted. Consequently the department issued another Circular No.470/36/99-Cx. dated 19.7.1999 wherein the Board withdrew its earlier Circular and instructed its field formations to safeguard the revenue interest.

What more you need for the field formations? Show cause notices were issued on the assessees periodically which out numbered the population of India. Not able to bear with this much of noise from the empty vessels the Hon'ble Supreme Court has finally laid down law that there is no specific rule levying duty on such drums / barrels / containers thus ending the coffee-toffee debate.