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**Whether Cenvat credit on capital goods for which 50% credit was availed in 1st year, can be denied in subsequent year when the final product is exempted from duty?**

**Dear Professional Colleague,**

We are sharing with you an important judgement of Hon'ble CESTAT-New Delhi in the case of **M/s. Kothari Fermentation and Biochem Ltd. Versus Commissioner of Central Excise, Noida [2012 (8) TMI 106 - CESTAT, New Delhi]** on following issue:-

## **Facts:**

The appellant had taken Cenvat Credit on the capital goods for which 50% credit was availed in 1<sup>st</sup> year but in the subsequent year, the final product is exempted from duty. The Revenue disallowed the availment of Cenvat Credit in the 2<sup>nd</sup> year on the ground that the Cenvat Credit is not given automatically but that shall be allowed as against duty payable. When no duty became payable nothing is allowable.

The appellant contended that accrual of Cenvat Credit on capital goods remained undisputed. The assessee has relied upon the following case in his support:

***CCE, Bangalore-II vs. Tafe Ltd. (Tractor Division) and CCE, Pune vs. Dai Ichi Karkaria Ltd. (112) E.L.T.353 (S.C.).***

## **Held:**

The Hon'ble CESTAT, New Delhi rejected the contention of the Revenue and held earning of duty by the assessee is not in dispute and reversal of Cenvat Credit is unwarranted when the final product is exempted from duty subsequently. Credit was earned and was not illegitimate, following the basic principle that right accrued is not deniable unless law abrogates such right and the appellant is entitled to the claim balance part of Cenvat Credit on capital goods.

*Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.*

Thanks & Best Regards.

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