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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-31-1997

Reported in : (1997)(96)ELT165TriDel

Appellant : Nova Iron and Steels Ltd.

Respondent : Commr. of C. Ex.

Judgement :

1. The facts of the case briefly stated are that the appellants are engaged in the manufacture of sponge iron and imported certain plant and machinery under project import. On certain parts and components they claimed Modvat credit as capital goods. The lower authorities did not allow them, the benefit of Modvat credit on 'refractory Bricks' 'through flow mixer' and 'conveyor belt' on the ground that Rule 57Q specifies that capital goods means machines, machinery, plant equipment, apparatus tools or appliances used for producing of processing of any goods or for bringing about any change in any substance for the manufacture of final products and also includes components, spare parts, accessories and moulds, dyes etc. and that since the products imported by the appellants are not covered by the above definition, therefore, they were not entitled to Modvat credit.

Against the above findings of the lower authorities the appellants have filed the present appeal before us.

2. We heard Shri P.S. Bedi, ld. Consultant for the appellant and Shri Jangir Singh, ld. JDR for the respondent Commissioner.

3. We find that the three items are 'refractory bricks' 'through flow mixer' and 'conveyor belt' on which Modvat credit of countervailing/additional duty paid at the time of the import has been denied. Similar issue came before the Larger Bench of this Tribunal in the case of Union Carbide v. CCE reported in 1996 (15) RLT 144 wherein this Tribunal held that 'refractory bricks' are not covered by the exclusion clause of the explanation under Rule 57A and, therefore, Modvat credit will be available on refractory bricks. We also note that in the case of Hindalco Industries reported in 1996 (88) E.L.T. 519 while dealing with the specific issue of 'refractory bricks' this Tribunal held that Modvat credit will be admissible on refractory bricks. We hold that Modvat credit is admissible to the appellant on 'refractory bricks'.

4. Insofar as 'through flow mixer' is concerned, we have seen the write up given on the use of this item, we find' that this equipment is used for conditioning the dust separated by ESP in closed and controlled pressure on continuous basis to match with production process. This activity we note is closely associated with the process of manufacture and hence we hold that Modvat credit will be admissible on 'through flow mixer'. Conveyor belt is nothing but material handling equipment.

We find that this Tribunal in the case of Collector of Central Excise v. Uttam Industrial Engineering Pvt. Ltd. reported in 1996 (86) E.L.T.498 held that the assessee will be eligible for Modvat credit as it is a material handling equipment. The Tribunal further in the case of Collector of Central Excise v. Nova Udyog reported in 1996 (88) E.L.T.532 confirmed the view taken in the case of Uttam Industrial Engineering. Similarly while dealing with a similar case in Collector of Central Excise v. MM. Forgings Ltd. reported in 1997 (89) E.L.T.617, this Tribunal held that fork lift is a material handling equipment and will be eligible for Modvat credit. Further, this Tribunal in the case of Mahindra and Mahindra reported in 1996 (87) E.L.T. 258 held that Modvat credit will be admissible on fixtures and baskets as "the definition of capital goods in Rule 57Q covers not only machines machinery but also components, spare parts and accessories' of the machines etc. In the circumstances, the objection taken by local authorities does not appeal to me. I therefore, allowed the appeal". We note that conveyor belt is nothing but a material handling equipment.

In view of the above discussions the appeal is allowed. Consequential relief, if any, shall be admissible to the appellants in accordance with the law.

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