Commissioner of Central Excise Vs. Triveni Engg. Works Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-22-1997

Reported in : (1997)(96)ELT655TriDel

Appellant : Commissioner of Central Excise

Respondent : Triveni Engg. Works Ltd.

Judgement :

1. The short point for determination before us in this appeal is whether boilers which are a part of the plant and machinery for manufacture of sugar is capital goods under Rule 57Q and is eligible to the benefit of credit of duty paid on boiler.

2. Narrating the facts of the case Shri Y.R. Kilania, JDR submits that the respondents who are engaged in the manufacture of sugar, purchased boilers; that boiler was subsequently notified as an item of capital goods for purpose of Modvat credit only from 16-3-1995. The ld. JDR submits that since in the instant case on the date of taking credit boiler was not an item specially included for purpose of Modvat credit under Rule 57Q, therefore, the ld. Commissioner (Appeals) has erred in holding that Modvat credit will be admissible on boiler.

3. Countering the arguments of the ld. JDR, Shri R. Chibber the ld.Advocate submits that boiler is an integral part of the plant and machinery used for the manufacture of cement. He submits that boiler provides the source of energy for running the turbine and making the plant operational. He submits that Modvat credit on capital goods is available on plant and machinery. He submits that plant

and machinery is a very wide and for any item to be considered as plant and machinery, it should be examined whether it is an integral part of the plant, machinery, equipment, spares and other items notified under Rule 57Q. He submits that boiler is undoubtly the item of plant and machinery. He submits that this aspect has been recognised by the Government by issue of a clarification on 16-3-1995 under Notification No. 11/95-C.E. (N.T.). He submits that this notification can be treated as clarificatory and submits that the Government has already held that boiler is capital goods and since it is capital goods, therefore, the date becomes immaterial. In support of his contention he cited a decision of this Tribunal in the case of J.K. Synthetic Ltd. v.Commissioner of Central Excise -1996 (88) E.L.T. 785. summing up his arguments the ld. Counsel for the respondents submits that the order of the ld. Commissioner (Appeals) may be upheld and appeal may be rejected.

4. Heard the submissions of both sides. We note that boiler is an integral part of the plant and machinery used in the manufacture of sugar. We also note that for running the plant in the sugar factory boiler is an essential part, we also find that in the case of J.K.Synthetic cited and relied upon by the appellant, this Tribunal on identical facts held that if transformer was included in the list of capital goods w.e.f. 16-3-1995, that does not mean that transformer was not a capital goods before that. Looking to the use of the boiler and its function, we hold that boiler is a capital goods and is entitled to Modvat credit in accordance with the relevant rules. In these circumstances the impugned order is upheld and the appeal is rejected.