Nrc Limited Vs. Commissioner of Central Excise

Nrc Limited Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/12693

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-22-1998

Reported in : (1998)LC25Tri(Mum.)bai

Appellant : Nrc Limited

Respondent : Commissioner of Central Excise

Judgement :
1. The application is for dispensing with pre-deposit of an amount of Rs. 41,73,425/- which is sought to be denied as capital goods Modvat credit under Rule 57Q. There is also a prayer for waiver of pre-deposit of penalty of Rs. 1,00,000/-.

2. Shri M.H. Patil, the ld. Counsel appeared for the applicant and submitted that the department has denied the capital goods Modvat credit on Chlorine cylinders which were used by the applicants for storage and transport of liquid chlorine gas which is obtained by the applicant in the course of manufacture of caustic soda which is their final product. The ld. Counsel submitted that the cylinders are specially designed for storing the chlorine gas under pressure in liquified form and for that purpose fitted with valves and without the design of the cylinder as such manner, storing of chlorine gas will not be possible. The ld. Counsel relied upon the Tribunal decision in the case of J.K. Synthetics Ltd. v. Collector -1997 (92) E.L.T. 150 wherein the Tribunal has held that packaging the commodity is part and parcel of the manufacturing process and is covered by the definition of the term 'manufacture' under Section 2(f) under the Central Excise Act and the packaging

material should be eligible for Modvat credit under Rule 57A. The ld. Counsel also referred to a decision of the Commissioner of Central Excise, Raipur dated 19-1-1995 where the Commissioner has held similar cylinders for chlorine gas are eligible for capital goods Modvat credit under Rule 57Q. The ld. Counsel also pleaded financial hardship for the applicants to pre-deposit duty and penalty.

3. Shri K.L. Ramteke, the ld. DR opposed the stay and referred to the findings of the Commissioner (Appeals) where he has mentioned that the goods were not installed in the factory and were used in the transportation of the final product.

4. We have carefully considered the submissions made by both the sides.

The question of eligibility of the chlorine cylinders for capital goods Modvat credit under Rule 57Q will have to be determined with reference to a detailed study of the design of the cylinders in relation to the role that they perform in the manufacturing process which exercise cannot be carried out at this stage, so as to find out whether the cylinders would satisfy the definition of capital goods as materials used for producing or processing of the final product. The decision of the Commissioner of Central Excise, Raipur is not binding on the Tribunal and the decision of the Tribunal cited is not on Rule 57Q.Therefore for the purpose of hearing the appeal on merits we direct that the applicant should deposit an amount of Rs. 10,00,000/- on or before 28th February, 1998 subject to which the balance amount of duty and penalty is dispensed with and recovery stayed. The matter will come up for ascertaining compliance with this order on 4th March, 1998.