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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-27-1998

Reported in : (1998)LC18Tri(Mum.)bai

Appellant : Batliboi and Co. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The issue for decision in this appeal is eligibility to Modvat credit of the duty paid on goods described as "consumable tools". It was stated by the appellant that these consist of hand tools or machine tools to carry out functions such as drilling etc. The appellant took credit of duty paid on such goods and on an objection raised by the Superintendent reversed the credit in the RG 23 Account. It subsequently filed a claim for refund of the credit, so reversed. The claim was based on the grounds that the manufacturer reversed the credit under coercion and consequently that the goods did not fall in the category of tools. The Assistant Collector whose order has been confirmed by the Collector (Appeals) rejected both these contentions.

Hence this appeal.

2. The Advocate for the appellant says that the goods in question are not excluded from being considered as inputs and that they are not capable of use by themselves, can only be used after having fitted into other goods. They are therefore incapable themselves of producing or processing any goods. They will

therefore not fall in the category of tools used for processing or producing any goods. He relies upon the decision of this Tribunal in Collector of Central Excise, Bolpur v.Durgapur Cement Works 3. The departmental representative contends that the goods are tools and are commercially and technically known as such. Since the inputs in question cannot be processed without use of these they are not excluded. He further argued since tools are excluded from the category of inputs, it would follow that goods which are used with them would also be excluded. He further points out that it is not clear from the papers produced by the appellant as to what exactly is the nature and scope of the goods, i.e. whether they are themselves goods capable of being used as tools independently or they are to be fitted into other goods before they can be used.

4. The Advocate for the appellant states specifically that the appeal is limited to the goods items of the kind which would be fitted into a tool and require frequent replacement such as drilling bits, cutting blades etc. It is therefore not clear that this appeal is confined to those goods which are not capable by themselves of being used as tools and which can only be used after being fitted into some other machines.

Such goods are generally classifiable under Heading 8207.00 of the Tariff. It cannot be questioned that such goods cannot be used by themselves. A hacksaw blade cannot be by itself used efficiently to cut metal or any other substance unless it is fitted into the hacksaw. A bit cannot drill holes unless it is fitted into a drill or an awl. The exclusion clause contained in the Explanation to the Rule 57G excludes tools or appliances for processing or producing any goods for bringing about any change in substance. It is not all tools or appliances which are excluded but only those tools or appliances for producing or processing any goods or bringing about any change in substance. The goods of the kind that they are consumed cannot themselves produce or process any goods or bring about any change in substance.Union Carbide India v. Collector of Central Excise, Calcutta - 1996 (86) E.L.T. 613 that parts of machines, machinery, plant equipment, tools or appliances do not fall within the excluded category of goods because such parts are not specifically excluded in the explanation. It is only the machines or machinery etc.

which are excluded. However it is not correct to consider these goods as parts of tools. The goods in question such as drill are complete without the presence of the interchangeable tools. The drill does not cease to be a drill, between the period when the old bit with it is removed and the new one is substituted. The tariff describes them in Heading 82.07 as for interchangeable tools for hand tools, machine tools etc. Therefore these goods, while they qualify to be considered as tools, fall in the excluded category of tools because they are not capable by themselves of producing or processing any goods or bringing about any change in substance.

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