SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Commissioner of Central Excise Vs. Ashoka Textools

Commissioner of Central Excise Vs. Ashoka Textools

SooperKanoon Citation : sooperkanoon.com/12880

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-16-1998

Reported in : (1999)(114)ELT625Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Ashoka Textools

Judgement :

1. The issue is common in both these appeals and they are disposed of by this order.

2. Each of the respondent is a manufacturer of twisting machines. In 1987 each of the respondents filed declaration under Rule 57G (1) for the purpose of taking Modvat credit for the manufacture of these machines. Among the inputs declared was aluminium bobbins. Each of the declarations was acknowledged by the Assistant Collector. The assessee thereupon took credit of the duty paid on aluminium bobbins.

Subsequently, the department came to the conclusion that aluminium bobbins were tools and therefore, excluded from being considered as inputs by virtue of Explanation to the porviso to Sub-rule (1) of Rule 11 A. Notices were issued in March and April, 1991 proposing recovery of the credit taken. Each of the assessees contested the proposal in the notice. It urged that the bobbins were imported along with the machine on the order of the customer and therefore, were not tools. It further urged that the notices were barred by limitation, having been

issued after six months and that the extended period contained in the proviso to Rule 57A would not apply because it had brought to the notice of the department the fact that it was using bobbins.

3. The Additional Collector did not agree that the bobbins were an input. He said that therefore, credit could not have been taken on the duty paid on them. He however, held that the demands were barred by limitation since the assessees had brought to the notice of the department the fact that it would treat the bobbins as an input. Hence these appeals by the department.

4. These appeals contend that extended period of five years specified in the proviso to Rule 57-1 will apply because the assessee knowingly mis-stated that the bobbins were a part of the twisting machines.

Therefore, the demands were not barred by limitation.

5. In the declaration filed by it the assessees had not mentioned that the bobbins were the part of the twisting machines. They declared them to be an input. The assessees in the declarations made by them had contended that the twisting machines were supplied either with, or without the bobbins at the option of the customers. This fact has been confirmed by the Additional Collector from the assessee's records. In these circumstances, the assessee could legitimately believe that the bobbins were inputs. It is not necessary that for a commodity to be an input used or in relation to the manufacture of the final product, it has necessarily to form a part of it. There are innumerable decisions to support this view. Therefore, I cannot agree that the assessees ought to have known that the bobbins were not inputs nor can it be said they did know that they were not inputs and despite that knowledge deliberately said that they were inputs. Further the fact is that the department knew that assessees intended to take, and actually took credit with respect to the bobbins, both from the declaration and the RT12 returns filed. However, the department chose to acquire in its assessees taking credit for nearly four years.

6. Therefore, I do not find anything to question the Additional Collector's findings on the issue of limitation.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com