

Comet Steel Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-02-1998

Reported in : (1998)(103)ELT422TriDel

Appellant : Comet Steel Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Hearing on the stay application was converted into the hearing of the main appeal with the consent of both sides.

2. The assessees claimed as inputs - (1) aluminium oxide grains; and (2) Cerwool pads under Rule 57A.3. The Additional Commissioner held that aluminium oxide grains were admissible inputs following the Calcutta High Court judgment in the case of Singh Alloys & Steel Ltd. v. Asstt. Commissioner of Central Excise reported in 1993 (66) E.L.T. 594 (Cal.). He held the pads as accessories of the furnace and permitted their availment under Rule 57Q. The Commissioner (Appeals), dealing with the review application filed by the department, found that whereas the cited case referred to chemicals, the ratio could not apply to aluminium grains. Relying on his predecessor's finding, he denied the claim of the assessees. He found the cerwool pads were not parts. Against this order, the present appeal has been filed, which was taken up for final hearing after granting unconditional stay and waiver of the sums confirmed.

4. I have heard Shri M.P. Devnath, Id. Advocate appearing with Shri Vyas, Advocate for the assessee and Shri A.M. Tilak, Id. D.R. for the Revenue.

5. I have carefully considered the submissions and I have seen the citations.

6. In terms of the show cause notice, the credit was taken in terms of Rule 57A. Both the lower authorities have discussed the eligibility of the inputs under Rule 57Q. Id. Advocate submits that this is permissible in terms of the Tribunal judgment in the case of Kalyani Steels Ltd. v. C.C.E., Pune reported in 1998 (99) E.L.T. 620 (Tribunal). I have seen this citation. In this particular case the Tribunal has held as valid a declaration filed under Rule 57T as admissible under Rule 57A.7. The cerwool pads are used as lining material for the furnace. There is no doubt that furnaces are capital goods. At the material time, the definition of capital goods covered thereunder, its accessories, components and parts for such goods. Furnaces are used to bring about change in a substance on application of heat. It is necessary to stop the leakage of heat from the furnace for activity optimum operational conditions. Therefore, at all times, the insulating material which prevents the escape of heat from the furnace has to be treated as integral parts and/or accessories of the furnaces. It is a different issue that by subsequent amendment, the refractories were specifically listed in the Explanation to Rule 57Q. But where material in the manner of refractories were always classifiable under Clause I(b) of the rules, the argument that the eligibility of such pads would commence only from the date on which refractories were specifically covered under the definition would have no force. Here it is not necessary to go into the issue whether the extended interpretation should be given a liberal interpretation or a restrictive one. Their admissibility as eligible goods is, therefore, without doubt.

8. As regards the aluminium oxide grains, the lower orders are not sufficient to explain the role played by the inputs. In the original order, it is stated such grains are shot at the surface of the roller to keep it rough. In doing so, the grains are fully consumed. In the impugned order, the Commissioner merely refers to his predecessor's order in which the admissibility of such goods has been discussed without giving the benefit of the logic behind that decision. In the appeal

memorandum, the claim made is that the grains are embedded in the body of the roller. The admissibility of these goods either under Rule 57A or under Rule 57Q would depend upon the manner in which they are used and the role they play in the manufacture of goods. No decision can be pronounced on these aspects in the absence of sufficient information. As for as aluminium grains are concerned, I have no option but to remit the proceedings back to the Commissioner (Appeals), who will give a well-reasoned order in their regard, if necessary by hearing the appellants once again.

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