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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-1999

Reported in : (1999)(108)ELT301TriDel

Appellant : Ester Industries

Respondent : Collector of Central Excise

Judgement :

1. The issue involved in this appeal is the eligibility of high speed diesel oil used as fuel for generation of electricity for manufacture of polyester chips, polyester films, etc., to Modvat credit under Rule 57A of the Central Excise Rules, 1944. The Assistant Commissioner of Central Excise had denied credit on this item as it was not covered as an input in terms of Rule 57A read with Notification 5/94-C.E., dated 1-3-1994; the Commissioner (Appeals) upheld the adjudication order, holding that since the expression "goods" has been replaced by the expression "inputs" by the corrigendum dated 10-3-1997 to Rule STB, credit under Rule 578 shall be admissible only if the input is one specified under Rule 57A and since high speed diesel oil is not an input under Rule 57A, it cannot be considered as an input under Rule 57B. Hence, this appeal.

2. We have heard Shri R. Santhanam, learned Advocate and Shri Sanjeev Srivastava, learned DR.3. We agree with the learned Counsel for the appellants that Modvat credit is available to HSD oil used as fuel for generation of electricity in view of the Tribunal's order in the case of India Cements Ltd. v. C.C.E., Hyderabad reported in 1997 (95) E.L.T. 520. In that case credit was sought to be

denied on the ground that HSD oil classifiable under Heading 27.10 was excluded from the coverage of goods eligible to the benefit of credit, at SI. No. 4 of the Table annexed to Notification 8/95. The Tribunal held that there was an apparent contradiction between Notifications 8/95 and 11/95, amending Rule 57D by insertion of two provisos, the second proviso of which reads as "provided further that credit of specified duty shall be allowed in respect of the inputs which are used for generation of electricity used within the factory of production for manufacture of final products or for any other purpose" and that the proviso incorporated in Rule 57D must, insofar as inputs used for generation of electricity are concerned, must prevail over non specification or exclusion in Notification 8/95. In this context, the Tribunal held that HSD oil falling under Heading 27.10 would be eligible for credit subject to satisfaction of the second proviso to Rule 57D viz. that it is used for generation of electricity used within the factory of production either for manufacture of final products or for any other purpose. The Tribunal allowed the appeal of M/s. India Cements. In the present case, there is no dispute that the HSD oil which was used by the appellants before us as fuel for generation of electricity for manufacture of their final products. Hence, the ratio of the above decision is applicable on all fours and following the same, we set aside the impugned order and allow the appeal. The contention of learned DR regarding the meaning of the expression "specified duty" is a new plea and it is not the basis of the impugned order which seeks to deny credit only for the reason that the HSD oil has not been specified as an input under Rule 57A. His further argument that the Notification 5/98 according to which an explanation was added to define inputs for the purpose of Rule STB as specified in a Notification issued under Rule 57A would bar taking of credit on HSD oil being a non-specified input and that this Notification would cover the period in dispute, even though prior to the issue of this Notification, since the Notification is to be treated as clarificatory and retrospective in operation, is also not acceptable since the Notification itself specifically provides that it will come into force on the date of its publication in the official Gazette.