

Commr. of Central Excise Vs. Kuber Lighting (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-06-1999

Reported in : (1999)(66)ECC172

Appellant : Commr. of Central Excise

Respondent : Kuber Lighting (P) Ltd.

Judgement :

1. These two appeals filed by the Revenue pertain to the admissibility of Modvat credit on Molybdenum wire. The Commissioner (Appeals) held that Modvat credit will be admissible to the respondents before us. For coming to this conclusion, he had relied on a number of decisions of the Tribunal on the issue. Being aggrieved by this order, the Revenue has filed these two appeals. Since the issue in both the appeals is the same, they were heard together and are being disposed of by this common order.

2. The appellants are manufacturers of tungsten filament and Molybdenum wire for captive consumption for making coils of tungsten wires. The department alleged that the Molybdenum wire was used by the assesseees as support wire for the manufacture of tungsten filament and it was used as tool or appliance and was therefore covered by the exclusion category under Rule 57A. Accordingly a show cause notice was issued to the assesseees. In reply to the show cause notice, the assesseees contended that Modvat credit was admissible inasmuch as Molybdenum wire can neither be termed as tool or appliance. They referred to the judgment of this Tribunal reported in 1995 (76) E.L.T. 92, 1997 (91) E.L.T. 162 and

1998 (97) E.L.T. 146 and submitted that the ratio of these decisions is squarely applicable to the facts of the case of the assesseees. The Commissioner (Appeals) after taking into consideration the case law cited by the assesseees set aside the order of the Asst.

Commissioner and allowed the appeal of the assesseees.

3. Shri Y.R. Kilanyia, Id. JDR submits that the Tribunal in the case of Apar Limited [1993 (67) E.L.T. 364] held that Molywire was not an input and thus was not eligible for the benefit of Modvat credit under Rule 57A. He submits that according to the explanation under Rule 57A certain items are excluded from the category of inputs; that molybdenum wire is used as a core (Mandrel) for coiling tungsten wire; that its function is only limited to usage as a core, for winding tungsten wire to obtain tungsten filament; that as such the use of molybdenum wire is in the nature of performing specific work as tool or appliance. He submits that since molybdenum wire was used as tool or appliance, therefore it was covered by the excluded category of inputs under Rule 57A. He, therefore prays that the appeal may be allowed.

4. Shri J.C. Patel, Id. Counsel submits that the department relied only on the decision of M/s. Apar Limited which was considered in the subsequent decision of the Tribunal and was stated to be bad law. He submits that the subsequent decision of the Tribunal clearly held that Molybdenum wire is neither tool nor appliance but is an input and not covered by the excluded category of the inputs under Rule 57A. He submits that it is settled in law that the judgment delivered later shall prevail over the judgment delivered earlier by a co-ordinate bench. He submits that 3 judgments relied upon by the lower appellate authority are for the subsequent period and distinguished the judgment in the case of Apar Limited and, therefore these judgments shall prevail over the judgment in the case of Apar Limited. He submits that the Tribunal has been consistently now holding that Molybdenum wire is not a tool or appliance so as to be covered by the excluded category under Rule 57 A but was an input as held by the Tribunal in the aforesaid three judgments. He submits that since in view of the fact that the Tribunal is now taking the consistent view that Modvat credit will be admissible on Molybdenum

wire, the impugned order may be upheld and the appeal may be rejected.

5. Heard the submissions of both sides. The first issue for determination before me is whether the proceedings in the instant case shall be covered by the decision in the case of Apar Limited or subsequent decisions in the case of Jai Electric Limited [1995 (76) E.L.T. 92], in the case of Kalpana Lamp and Components Limited [1997 (91) E.L.T. 162] and in the case of ECE Industries Limited reported in 1998 (97) E.L.T. 146 and 284.1 find that the decision of Apar Limited is of 1993, and these decisions are of subsequent period. I further note that in the case of Kalpana Lamp & Components Ltd., the Tribunal considered earlier decision in the case of M/s. Apar Limited and came to the conclusion that the decision in the case of M/s. Apar Limited was bad law. Having regard to the settled position that subsequent decisions of the cases shall prevail over the earlier judgment, I find that the judgment in 3 cases cited above will cover the present case. I further note that the question of admissibility of Modvat credit on Molybdenum wire was gone into in detail by the Tribunal in the above 3 decisions, therefore the ratio of the above judgments shall be applicable to the present case. Since the facts in the present case are identical to the facts in the earlier 3 cases. In this view of the matter and following the ratio of the judgments of this Tribunal as indicated above, I uphold the impugned order and reject the appeals.

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