

**Cce Vs. Technologicals Institute**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jun-16-1999

**Reported in :** (1999)(85)LC886Tri(Delhi)

**Judge :** A T V.K.

**Appellant :** Cce

**Respondent :** Technologicals Institute

**Judgement :**

1. The issue involved in this appeal filed by Revenue is whether capital goods credit under Rule 57Q of the Central Excise Rules is available in respect of winding wires of copper used for rewinding the electric motor which in turn was used to run the spinning machines and in respect of spare parts of static converter.

2. Shri Y.R. Kilania, learned D.R., submitted that Assistant Commissioner had disallowed the capital goods credit in Adjudication Order dated 13.7.1997 holding that winding wires were used for repairing electric motors which themselves did not bring about any change in the manufacture of yarn; that similarly static converter was used to convert Alternating Current into Direct Current and as such did not bring about any change in the final product; that the Commissioner (Appeals) allowed the capital goods credit on winding wires and static converter following the decision in CCE, Meerut v. Modi Xerox 1996 (86) ELT 530 (T). He, further, submitted that both the impugned items were not capital goods as per

Explanation to Rule 57Q as these items were not used for producing or processing or bringing about any change in any substance for the manufacture of the final products and the amendment made by Notification No. 14/96-CE, dated 23.7.1997 (sic) is not available to the capital goods received in the factory before 23.7.1996. He finally submitted that the issue regarding eligibility of wires and cables for capital goods credit has been referred to the Hon'ble High Court in the case of Nova Udyog Ltd. 1997 (97) ELT 229 (T).

3. Shri R. Pal Singh, learned Advocate, submitted that the issue involved in the present appeal stands decided by the Larger Bench of the Appellate Tribunal in the case of Jawahar Mills Ltd. v. CCE, Coimbatore 4. I have considered the submissions of both the sides. The Larger Bench of the Tribunal in Jawahar Mills case, supra, considered the scope of capital goods eligible for capital goods credit under Rule 57Q of the Central Excise Rules. The Tribunal after referring to the Supreme Court's decision in CCE v. Indian Farmers Fertilizer Coop. Ltd. , J.K. Cotton Spg. and Wvg. Mills Co. Ltd. v. I.T.O.1997 (91) ELT 34 (SC) and Gujarat High Court's decision in Industrial Machinery Manufacturing (P) Ltd., held that "it will not be possible and correct to construe the expression used for producing of any goods for the manufacture of the final product' as synonymous with 'used for bringing about any change in any substance for the manufacture of the final product'....The said expression would not, to use the language of the Supreme Court in J.K. Cotton Spg. & Wvg. Mills Co. Pvt. Ltd., be limited to ingredients or commodities used in the process or those directly and actually needed for turning out or the creation of the goods." Appellate Tribunal, therefore, held that wires and cables would be covered by the expression plant' being an item necessary for the assessee to carry on his business. Applying the test laid down by the Tribunal in Jawahar Mills case, the oil circuit breaker is an item necessary for the appellants to carry on his business and is thus eligible item for availing capital goods credit under Rule 57Q of the Central Excise Rules.

5. The Larger Bench in Jawahar Mills case further held "the issue as to whether the amendment effected in Notification 11/95 dated 16.3.1995 under Rule 57Q and Notification 14/96-CE dated 23.7.1996 is retrospective, becomes academic. We have to decide the matter according to the language of the provision as it

stood at the material time. We are required to examine Explanation 1(a) as it stood in 1994-95 and 1995-96 and we, therefore, see force in the contention of the assessee that the items which are recognised as eligible to capital goods credit by Notification 14/96 are items covered by Explanation 1(a) and it cannot be contended by the Revenue that these items are not covered by the Headings mentioned in Notification 14/96 or that the items are not capital goods whether the meaning of Explanation 1(a) under Rule 57Q as it stood during the relevant period." The Appellate Tribunal in Jawahar Mills case held control panels, cables, welding electrodes as eligible items for capital goods credit as per Explanation to Rule 57Q as it stood in 1994-95 as these are used for producing or processing the goods. Following the ratio of this decision of the Larger Bench, I hold that static converter and electric motors are eligible capital goods and their spare parts and components will also be eligible items for the purpose of availing the capital goods credit under Rule 57Q of the Central Excise Rules. Accordingly, the appeal filed by Revenue is rejected.

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