Commissioner of Central Excise Vs. Pittie Cement Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-10-1999

Reported in : (1999)(112)ELT1050TriDel

Appellant : Commissioner of Central Excise

Respondent : Pittie Cement Industries

Judgement :
1. The issue involved in this appeal preferred by Revenue is whether switch gear/control gear used as spare parts in D.G. sets are eligible capital goods under Rule 57Q for the purpose of availing capital goods credit.

2. When the matter was called, no one was present on behalf of the Respondents, M/s. Pittie Cement & Industries Ltd. The registry informed that the notice of hearing sent to them has been received back from postal authority with the remark 'Factory locked'. We, therefore, heard Shri Y.R. Kilaniya, learned DR and perused the records.

3. Shri Y.R. Kilaniya, learned JDR, submitted that both the Assistant Commissioner and Commissioner (Appeals) allowed the capital goods credit on these two goods as these were used as parts of the D.G. set and would be covered by Explanation 1(d)(ix) to Rule 57Q. He mentioned that switch gear/control gear merely regulate the electric current and are not used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product; that these cannot be called as the

component/spare parts of the D.G.set but are installed separately.

4. I have considered the submissions of the Revenue and perused the records. Both the lower authorities have allowed the capital goods credit as they found that these items are parts of the D.G. set. The Commissioner (Appeals) has held that D.G. sets were specifically covered by Explanation 1(d) to Rule 57Q; that once it is established that they are integral to the D.G. sets, they would get covered under the definition of capital goods. The Revenue has now contended that these are installed separately. The Revenue has, however, not denied that the impugned goods regulate the flow of electricity and they are used with D.G. sets and as such would be eligible for capital goods credit under Explanation 1(d)(ix) to Rule 57Q(1) of the Central Excise Rules which read as under :- "Components, spares and accessories of the goods specified against Item (i) to (viii) above." The electric generating set of output exceeding 75 KVA was mentioned as Item (v). Further, the Larger Bench of the Tribunal in Jawahar Mills case, 1999 (108) E.L.T. 47 (T) 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 C.C.E. v. Indian Farmers Fertilizers Coop. Ltd. -1996 (86) E.L.T. 177 (S.C.), J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. S.T.O. -1997 (91) E.L.T. 34 (S.C.) 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." The Tribunal held control panels, cables, welding electrodes, etc., as eligible items for capital goods as these are used for producing or processing of goods. Following the ratio of the decision of the Larger Bench, I hold that switch gear and control gear are eligible capital goods for the purpose of availing the capital goods credit. Accordingly, the appeal filed by Revenue is rejected.