SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Jay Electric Ltd. Vs. Commissioner of Central Excise

Jay Electric Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/16708

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-09-1999

Reported in : (2000)(67)ECC333

Appellant : Jay Electric Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The question for consideration in this appeal is whether molybdenum wire which is used by the appellant as a mandrel for making coils of tungsten filament as an input within the meaning of Rule 57A. In the order impugned in the appeal, the Collector (Appeals) has held, following the decision of this Tribunal in Apar Ltd. v. C.C.E. -1993 (67) E.L.T. 364 that it is an appliance, and hence specifically excluded by the Explanation to Rule 57A as being considered an input.

2. Mr. M.C. Katakia, director of the appellant contends that the mandrel is used as a support for coiling the tungsten filament. The coil is so tightly wound around the mandrel that the mandrel has to be dissolved in acid before the coil can be further utilized. It hence cannot be used more than once. It is therefore a consumable and not an appliance. He cites the finding in the decision of the South Regional Bench of this Tribunal in C.C.E. v. Vijil filament and Anr. in Appeals E/369/91 and 420/91. In that decision, the Tribunal has held that molybdenum wire is an input. The Tribunal had also noted that the Board in its Order 267/63/91-CX. 8, dated 30-12-1992 had taken view that molybdenum is not a tool and hence it is a consumable and credit is admissible.

3. The Tribunal in the decision in Apar Ltd. v. C.C.E., 1993 (63) E.L.T. 364 has after referring to the definition of mandrel in McGraw Hill dictionary of Scientific and Technical Terms, held that it is an appliance used for coiling tungsten wire and hence falls within the Exclusion clause to Rule 57A. We would hesitate to describe the mandrel as an appliance. It is in our view more appropriate to be described as a tool. The definition of the terms appliance and tool in the McGraw Hill Dictionary of Scientific and Technical Terms is reproduced below.

Appliance - A piece of equipment that draws electric or other energy and produces a desired work-saving or other results, such as an electric heater, a radio, or an electronic range.

Tool - Any device, instrument, or machine for the performance of an operation, for e.g. a hammer, saw, lathe, twist drill, drill press, grinder, planer or screwdriver. To equip a factory or industry for production by designing, making and integrating machines, machine tools, and special dies, jigs and instruments, so as to achieve manufacture and assembly of products on a volume basis at minimum cost.

4. It is to be noted that this aspect was not gone into in the South Regional Bench decision. The ground in the Collector's appeal before the Tribunal for disallowing molybdenum was only that it was a consumable. The question as to whether it was a tool or an appliance was not taken before the Tribunal.

5. We are not able to understand why the fact of the mandrel being a consumable, or being destroyed after a single use, makes it any the less a tool. All machinery over a period of time is consumed in the sense that it breaks down or wears out. It is only the extent of time of break up that differs from one item to another, and depends on the period of use. Various tools such as drill bits, saw blades etc.

inevitably wear out faster than other items; the functions to which they are put lead to generation of sufficient friction and heat to destroy the metal of which they are made. Tools as drill bits, saw blades would after sufficient use at one time be equally incapable of more than one use. Further, the fact of particular commodity being consumable or not does not appear to us to have relevance whether or not it is an input. Rule 57A does not directly or by implication, refer to the consumable nature of any input. The Board's view in order which is referred to in the decision of the Madras Tribunal in its decision that "it is essentially required of a tool that it must be available for repeated use does not cite any authority". We are not able to accept in view of our discussion, the correctness of this statement.

The contention that the mandrel does not play an active part in giving shape to the tungsten wire is not easy to follow. The coil cannot be formed without the mandrel. Moulds do not take an active part in giving shape to the item which is moulded in them, at the same time they are in the nature of tools. The statement that "the winding process is not used as a tool in giving shape to the tungsten wire" is difficult to understand.

6. We therefore conclude that the mandrel falls within the excluded category of tool as specified under Rule 57A. The Collector's finding on this aspect is approved.

7. We must however point out an error in the order of the Collector, after considering both the decisions of the Madras and Bombay Bench of the Tribunal, citing that he is within the territorial jurisdiction of the Bombay bench of the Tribunal and he is bound to follow the decision of that bench and not of the Madras bench. The Tribunal is an all India body, and there is no territorial jurisdiction as in the case of a High Court for a bench of the Tribunal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com