Commissioner of Central Excise Vs. Hvr Alloys and Steels Ltd.

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SooperKanoon Citation : sooperkanoon.com/16752

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-15-1999

Reported in : (2001)(130)ELT756TriDel

Appellant : Commissioner of Central Excise

Respondent : Hvr Alloys and Steels Ltd.

Judgement :

1. Concerned Commissioner has raised the following question which according to me is a question of law and arises out of Tribunal's order dated 19-6-1998 1998 (103) E.L.T. 132 (Tri.) :- "Modvat credit will be admissible under Rule 57-A on "lubricating oil, and Welding Rods" which do not go in the streamline of production of final product and the use of lubricating oil was only lubrication of machines and Welding Rods were used for the purposes of maintenance and repair work." 2. Before dealing with the aforesaid question, I would like to reproduce the Tribunal's finding giving the relief to the respondents (appellants in appeal) herein which are set out in para 5 of the Tribunal's order :- "5. I have carefully considered the pleas advanced from both the sides. I am impressed by the plea of the learned Advocate for the appellants that a very categorical finding has been given by the lower appellate authority that Modvat credit is admissible on both the products involved herein namely 'welding rods' and 'lubricant' .under Rule 57A and that the revenue has not challenged this finding by filing an appeal. Therefore, his further submission is a logical corrolary of this finding that the Commissioner (A) should have given the relief on his own finding that they are entitled to the Modvat credit

under Rule 57A and that the credit should not have been denied merely on the ground that the appellants have claimed the Modvat credit under Rule 57Q. On this short ground alone I allow the appeals with consequential relief to the appellant." 3. I have heard both sides. It may be observed from the findings of the Tribunal that Tribunal has extended the relief to the respondents herein on the basis of the finding by the lower appellate authority that welding rods and electrodes are entitled to Modvat credit under Rule 57A. The question now raised by the Commissioner that the lubricating oil and welding rods do not go into the streamline of the production of final product and the use of lubricating oil was only for lubrication of machines and that welding rods were used only for the purpose of maintenance and repair work was not gone into at all by the Tribunal. If Revenue had any doubt about the finding of the lower appellate authority regarding the admissibility of Modvat credit on the two products involved herein, they should have challenged the said finding of the Commissioner (A) before the Tribunal by filing an appeal or by filing a cross-objection to the appeal of the respondents herein.

That having not been done, they cannot question the finding of the lower appellate authority in the present Reference Application. The question, therefore, posed in the Reference Application does not arise out of the Tribunal's order. Hence, the Reference Application is dismissed.