

Dhoot Compack Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-21-2000

Reported in : (2001)(130)ELT964Tri(Mum.)bai

Appellant : Dhoot Compack Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant by letter dated 10-12-1999 has requested to decide this appeal on merits in their absence, in the light of the decisions in Commissioner of Central Excise, Meerut v. Modi Xerox Ltd. -1996 (88) E.L.T. 530 and C.C.E., Chandigarh v. Oswal Agra Furnace Ltd. -1999 (111) E.L.T. 542.

2. For understanding the dispute in this case, a brief reference to the facts is necessary. The appellant is engaged in the manufacturing HDPE/PP tape, fabrics and sacks. They are availing Modvat facility under Rule 57A and on capital goods under Rule 57Q of the Central Excise Rules, 1944. Show Cause Notice dated 17-6-1994 was issued to the assessee requiring them to state why Modvat credit claimed on an electronic weighing machine model 6-AW/031 should not be denied as violative of Rule 57Q of the Central Excise Rules, 1944. In reply to the Show Cause Notice, they reiterated their stand that they are entitled to get capital goods credit. The adjudicating officer, as per Order-in-Original No. 183/94, dated 12-9-1994, disallowed Modvat credit under Rule 57Q of the duty paid on electronic weighing machine.

Consequently, the credit if availed was directed to be reversed. The assessee took up the matter in appeal. The appellate authority, by Order-in-Appeal No. A-486/95, dated 21-11-1995 confirmed the order of the adjudicating authority. Hence this appeal.

3. Explanation to Rule 57Q of the Central Excise Rules, 1944 gives the scope and meaning of capital goods as : (a) Machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products; (b) Components, spare parts and accessories of the aforesaid machines, machinery, plant, equipment, apparatus, tools or appliances used for aforesaid purpose; and (c) Moulds and dies, generating sets and weighbridges used in the factory of the manufacturer.

In order to claim the benefit of Rule 57Q in relation to a capital goods, the same must be machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substances for the manufacture of final products as per Clause (a). If the machinery is such that it is not used for producing or processing of any goods or for bringing about any change in any substances, such machinery cannot fall under Rule 57Q whereby credit of duty can be claimed by the manufacturer.

4. According to me, an electronic weighing machine does help in weighing goods. That weighing machine cannot be used for producing or processing of any goods nor can it be used for bringing about any change in any substance. The goods those are weighed will not undergo any change while placed on the weighing machine. Clause (b) of the Explanation quote above, deals with components or spare parts of such machinery falling under Clause (a). Clauses (a) and (b) of the Explanation quoted above, specifically takes care of such capital goods which are used for the production or processing of any goods or for bringing about any change in any substance Clause (c) of the Explanation deals with an entirely different category of capital goods.

They are moulds, dyes, and generating sets and weighs bridges used in the factory of the manufacture. The goods mentioned in the Clause (c) of the

Explanation form a category separate from that falling under the earlier Clauses used for producing or processing or for bringing about any change in any substance in the course of the manufacture of the final products. A weighbridge in the factory can be utilised only for weighing materials that go in manufacture of the final product. So also the electronic weighing machine imported by the assessee. The benefit of capital goods credit was denied to the assessee on the ground that it was only weigh bridges that are entitled to such credit under Clause (c) to the Explanation and electronic weighing machines are not to be categorized along with the weighing machines for they have not been specifically mentioned therein. This argument lacks in logic. The purpose for which weighbridges and weighing machines are put to use is the same. Electronic weighing machines may be giving the weight with more accuracy. The fact that it gives the weight with more precision than a weighbridge can be no reason for denying capital goods credit in respect of it. This view is supported by the decisions quoted above. In the first decision, a learned Single Member of this Tribunal took the view that a weighing machine does satisfy the definition of capital goods under Rule 57Q. In the second decision cited, a Bench of two members of this Tribunal came to the conclusion that weighing machine plays a necessary part in manufacture and marketing the goods and it is a necessary capital equipment.

5. I am in respectful agreement with these observations made by this Tribunal in the decisions referred to above. Consequently, I hold that the authorities below were not justified in denying capital goods credit in respect of the electronic weighing machine imported by the appellant.

6. The appeal is allowed. Orders passed by the adjudicating authority and the appellate authority are set aside.

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