

Mukund Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-11-2000

Reported in : (2000)(93)LC338Tri(Mum.)bai

Judge : G Srinivasan

Appellant : Mukund Ltd.

Respondent : Cce

Judgement :

1. In this case, the question involved is, whether lubricating oil is eligible for modvat credit or not. In the impugned order the Commissioner (Appeals) has held as follows: I have considered the facts of the case, the grounds of appeal, the findings of the adjudicating authority and the law on the subject. I find that the criteria for admissibility for modvat credit is that inputs should be essential for manufacture of certain final product whether they are used directly or indirectly used irrespective they are visible or not or lost in the process. Hence, lubricants and grease do not qualify for modvat, The same is also held by the Hon'ble CEGAT in the case of Kanoria Sugar and General Manufacturing Co. Ltd. v. CCE, Allahabad do not find any reason to interfere with the impugned order and reject the appeal as untenable under the law.

2. In the impugned order the Commissioner (Appeals) has sought to follow the Judgment of the CEGAT in Kanoria Sugar & General Manufacturing Co. Ltd. He also held that the inputs should be essential for manufacture of certain final

product.

3. To me it appears, the reasons are not sound. The essentiality of use of an input in the manufacture cannot be a criteria. Rule 57A only specifies that the declared inputs should be used in or in relation to the manufacture of the declared final product. The essentiality criteria mentioned by the Commissioner in the impugned (order) is wrong in my view.

4. Moreover, the Judgment in the Kanoria Sugar & General Manufacturing Co. Ltd. case has been considered by the Tribunal in the case of Simplex Ltd. 1998 (98) ELT 553. The two Member Bench after referring to the Larger Bench case in 82 ELT 575 : 1996 (63) ECR 193 (T) had held that the goods that is lubricating oils are inputs and do not fall within the excluded category. Kanoria Sugar Mills' decision had been referred to in para 7 of the said judgement. I am, therefore, of the view that the claim made by the assessee is legally justified. I, therefore, set aside the impugned order and allow the appeal with consequential relief, if any, according to law.

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