

Commissioner of Customs and Vs. Madhya Pradesh Iron and Steel Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-10-2000

Reported in : (2000)(69)ECC696

Judge : J Balasundram, A T V.K.

Appellant : Commissioner of Customs and

Respondent : Madhya Pradesh Iron and Steel Co.

Judgement :

1. This Reference Application is filed by Revenue with a request to refer the following point of law to the Hon'ble High Court which has arisen out of the Tribunal's final order No. A/460/98-NB dated 8.6.98.

i. Whether refractories & refractory materials used for lining of the furnace can be treated as 'inputs' within the meaning of Rule 57A for availing Modvat credit? ii. Whether refractories falling under Chapter 69 of the schedule to the Central Excise Tariff Act, 1985, received in the factory prior to 16.3.95 can be treated as eligible capital goods for availing credit under Rule 57Q, when the same were brought under the purview of capital goods vide Notification No. 11/95-CE(NT) dated 16.3.95.

iii. Whether refractory materials falling under Chapters 38 and 68 of the Schedule to the Central Excise Tariff Act, 1985, received in the factory prior to 23.7.96 can be treated as eligible capital goods for availment of credit under Rule 57Q, when

the said goods were brought under the purview of capital goods vide Notification No. 14/96-CE (NT) dated 23.7.96.

2. Shri R.D. Negi, Ld. SDR, submitted that a similar application filed by the Revenue before the Tribunal has been allowed in the case of Steel Industries Ltd. v. C.C.E., vide Final Order No. R/34/98-NB dated 22.5.96. The Ld. Counsel for the Respondents opposed the reference application by submitting that the Patna High Court on a Reference Application in the case of CCE v. Telco 1999 (31) RLT 800 (Patna) has held that decision in Union Carbide India Ltd. whereas it was decided that felts, wire mesh, dandy cloth, etc., used as Parts of machine, were eligible inputs, was correct and as much Modvat credit under Rule 57A of the Central Excise Rules was available in respect of refractories. He also referred to the decision in the case of CCE v. Jayshri Timber Products (T) in which it was held, relying upon the decision of the Supreme Court in the case of Commissioner of Income Tax v. V. Basanta Kumar Agarwal, that the Tribunal is obliged to refer only the question of law which call investigation, examination, debate when it is dubious problem and if a point of law decided by the Tribunal is positive, certain, definite and sure, there is no obligation on the part of the Tribunal to refer the matter as the point cannot be termed as a question of law. He also draw our attention to the decision of the Supreme Court in the case of Commissioner of Gift Tax, Bombay v. Smt. Kiisumben D. Mahadevia wherein it was held that where the answer to the question of law is self-evident or is concluded by a decision of this court it would be futile to make a reference and in such a case the Tribunal would be justified in refusing to refer the question to the High Court. Fially, he relied upon the decision in the case of CCE v.Hindako Industries Ltd. 1999 (32) RLT 399 (CEGAT) wherein the Tribunal has rejected the reference application following the Tribunal's final order No. E/REF/185/97-NB dated 19.9.97 and E/REF/189/97 NB (DB) dated 25.9.97.

3. We have considered the submissions made by both sides. The Modvat credit was allowed to the Respondents following the decision in the case of Union Carbide India Ltd., supra, which has been upheld by the Patna High Court, in Telco's case, supra. We find that the Tribunal, in the past as pointed out by the Ld. Counsel for the Respondents, has rejected the Reference Application for referring

the matter regarding availability of Capital Goods credit in respect of refractories.

Further in view of the Supreme Court judgment referred to above, we find no reason to refer the present matter to the Hon'ble High Court.

In view of this the Reference Application filed by the revenue is rejected.

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