Collector of Central Excise Vs. Dlf Cement Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-05-2000

Reported in : (2000)(120)ELT498TriDel

Appellant : Collector of Central Excise

Respondent : Dlf Cement Ltd.

Judgement :
1. The Revenue has filed the above application under Section 35F(1) of the Central Excise Act, 1944 for reference of the following question of law purported to have arisen out of Tribunal's Final Order No.A/510/99-NB, dated 24-6-1999 holding that transformers used in ESP Section of the assessee's factory are capital goods eligible to Modvat credit under Rule 57Q of the Central Excise Rules: - "Whether the Tribunal has the power to overlook the statutory provisions of the law by allowing Modvat credit on the goods which were otherwise not capital goods under the definition of capital goods provided under explanation 1 of Rule 57Q(1) of Central Excise Rules, 1944 during the relevant time." 2. We have heard Shri M.M. Dubey, learned DR and Shri M.P. Dev Nath, learned Advocate.

3. We find that a similar issue has already been referred to the Hon'ble Bombay High Court in the case of Collector of Central Excise, Pune v. Three M Paper Manufacturing Co. Pvt. Ltd. reported in 2000 (37) RLT 820. We also note that Supreme Court has admitted the Special Leave Petition against the Tribunal's Larger Bench decision in the case of Jawahar Mills v. Collector of Central Excise reported in 1999 (32) RLT 379 in which electrical distribution equipment was held

to be eligible to capital goods credit. Since a question of law arises for reference, we allow the application and refer the following question of law for consideration by the Hon'ble Rajasthan High Court at Jodhpur, in spite of the respondents citing before us Reference Order No. R/32/99-NB, dated 4-11-1999 (Collector of Central Excise, Indore v. Lupin Laboratories Ltd.) rejecting the Revenue's reference application on the question as to whether electric cables and control box etc., can be considered to be capital goods under Rule 57Q: "Whether electric distribution equipment such as transformers, cables, fuses and electric motors and parts which may not by themselves be used for producing or processing or for bringing about any change in any substance in the manufacture of the final product but without which, having regard to the modern technology such production or processing of goods for manufacture of final product is not possible, are capital goods within the meaning of Clause (a) to the Explanation of Rule 57Q as it stood at the relevant time".

5. M/s. DLF Cement Ltd., are engaged in the manufacture of cement. They had applied for allowing Modvat credit on transformers for which they filed a declaration on 6-2-1995. The Assistant Collector denied credit on the ground that transformers are not covered as capital goods under Rule 57Q of the Central Excise Rules, 1944 prior to 16-3-1995. The assessees in reply to the show cause notice relied on a judgment passed by the Commissioner of Customs (Appeals) in the case of Indian Rayon and Industries Ltd. and the Assistant Collector allowed Modvat credit to the assessees. The Commissioner (Appeals) after reviewing the case held that transformers are not capital goods and allowed the appeal of the Revenue. Aggrieved by this order, the appellants filed an appeal before the Tribunal. The Tribunal vide its Final Order No.A/510/99-NB(DB), dated 24-6-1999 allowed the appeal of the appellants holding that transformers are capital goods eligible to Modvat credit under Rule 57Q in the light of several judgments of the Tribunal including the judgment in the case of Collector of Central Excise v.Navbharat Paper Mills 6. Aggrieved by the Final Order passed by the Tribunal, the Revenue filed a reference application seeking reference of the following question of law for reference to the jurisdictional High Court on the ground that a similar issue has already been referred to the Hon'ble Bombay High Court in the case of Collector of Central Excise, Pune v.Three M. Paper Manufacturing Co. P.

Ltd "Whether the Tribunal has the power to overlook the statutory provisions of the law by allowing Modvat credit on the goods which were otherwise not capital goods under the definition of capital goods provided under Explanation 1 of Rule 57Q(1) of Central Excise Rules, 1944, during the relevant time." 7. In view of the fact that a similar issue has already been forwarded for consideration by Hon'ble Bombay High Court, we forward the following question of law to the Hon'ble Rajasthan High Court at Jodhpur for its considered opinion: "Whether electric distribution equipment such as transformers, cables, fuses and electric motors and parts which may not by themselves be used for producing or processing or for bringing about any change in any substance in the manufacture of the final product but without which, having regard to the modern technology for such production or processing of goods for manufacture of final product is not possible, are capital goods within the meaning of Clause (a) to the Explanation of Rule 57Q as it stood at the relevant time".