

Commissioner of Central Excise Vs. Blue Cross Laboratories Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-08-2000

Reported in : (2000)(120)ELT716Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Blue Cross Laboratories Ltd.

Judgement :

1. In the impugned order the Commissioner (Appeals), has partly accepting the claim made by the assessee, remanded for reconsideration, the claim for Modvat credit on compressor and other parts of air conditioning plant, weighing machine, electrical transformer, and other parts. This is being challenged in this appeal.

2. The Assistant Commissioner had denied the claim on the ground that the goods were not used for producing or processing any goods or bringing about any change in any substance. This is the reasoning cited in the appeal, which the departmental representative reiterates. He also cites the decision of this Tribunal in CCE, Madras v. Fourts Laboratories (India) Pvt. Ltd. -1997 (92) E.L.T. 231. That decision, which relies on the earlier decision in CCE v. Sharmugaraja Spinning Mills Ltd. - 1997 (89) E.L.T. 84 (Tri.) to come to its conclusion that air conditioners used to regulate temperature and humidity in a factory manufacturing pharmaceutical products are not capital goods, cannot be considered good law any longer in the light of the light of the larger bench decision in Jawahar Mills Ltd. v. CCE 1999 (108) E.L.T. 47 has held such goods, as we are concerned, to be capital goods and has expressly held that the law held in CCE v. Sharmugaraja

Spinning Mills Ltd. 3. The contention that Clause (a) of the explanation below rule 57Q(1) specifically excluded compressors and other goods used for refrigeration and air conditioning equipment is no answer. The Tribunal has understood Clause (a) under explanation 1 to include not only goods directly employed for producing or processing any goods but those without which such production or processing cannot take place. The goods in question therefore would be entitled to be considered capital goods in terms of Clause (a) of explanation 1. In this view of the matter, the question of any retrospective application of Clause (a) does not require consideration.

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