

Nrc Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-15-2000

Reported in : (2000)(92)LC663Tri(Mum.)bai

Judge : S T Gowri, J S Murthy

Appellant : Nrc Ltd.

Respondent : Cce

Judgement :

1. These two applications are disposed of by this common order. The common question involved in these appeals is eligibility to credit under Rule 57Q of various items in the applicant's factory.

2. The items involved in application E/241/2000-Mum are alloy copper bar, copper bar, copper strip etc. The advocate for the applicant has made a list of these items, indicating them, their use, the amount involved and decisions of the Tribunal. On hearing the departmental representative, it appears to us that prima facie a large majority of these items are covered by the decisions of this Tribunal. The credit has been denied only on the ground that each of the items in question is not directly used to produce any goods or to process any substance.

The decision of the Tribunal, particularly the decision of the larger bench in *Jawahar Mills v. CCE* have taken the views that it is not only those items which are directly used to produce any goods or to bring about any change in any substance

that would be capital goods for the purposes of credit. They have held that even these items which even if not directly used for such purposes are essential for carrying out the manufacturing activity, would be capital goods. There are however certain items, such as structural items etc.

which do not prima facie satisfy even this requirement. There are also some other items the use of which is not very clear and is not properly explained.

3. We therefore consider it appropriate to ask the applicant to keep unutilised in its Modvat account a sum of Rs. 1.5 lakhs pending disposal of this appeal. On compliance with this order, we waive deposit of the remaining duty and stay its recovery.

4. The item for consideration in the other application, E/308/2000-Mum, is what is described as reactor. It was explained that this was in the nature of electric capacitor, which was utilised by the applicant in order to reduce the electric consumption. We are prima facie unable to agree that it satisfies the definition of capital goods under Rule 57Q. The object of such a capacitor is to effect economy in its expenditure by reducing the amount of electricity consumed. The use or non-use of this capacitor would not have the slightest effect on the production processes and technology employed by the applicant. The goods in question would continue to be processed or produced without this capacitor; the only difference would be the higher consumption of electricity. Whether such saving of electricity itself would justify treatment of the goods as capital goods is, at this stage, extremely doubtful. Accordingly we consider it appropriate to ask the applicant to keep unutilised in the Modvat account the total duty demanded of Rs. 70,000/- and report compliance on 20th June, 2000 upon which we waive deposit of duty demanded and stay its recovery.

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