

Commissioner of Central Excise, Vs. M/S. J.C.T. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-19-2000

Appellant : Commissioner of Central Excise,

Respondent : M/S. J.C.T. Ltd.

Judgement :

1. In this appeal the issue relates to the availability of modvat credit on the goods in question, as detailed in the Order-in-original.

The respondents claimed these goods as capital goods and sought modvat credit of the amount in dispute on them. They also filed requisite declaration wherein they alleged the disputed goods as capital goods.

But the Assistant Commissioner did not accept the same and through the order-in-original dated 23.2.96, observed that these were not capital goods. That order of the assistant Commissioner was challenged by the respondents and the Commissioner (Appeals) modified the same through order-in-appeal. He held that Schlathorst Open and Spinning Machine did not satisfy the definitions of 'capital goods' while other goods fell within that definition.

2. The Revenue has come up in appeal against this impugned order by the Commissioner (Appeals). However, the respondents had not challenged the correctness of that portion of the order-in-appeal vide which the Commissioner (Appeals) has held Schlathorst Open and Spinning machine to be not capital goods.

3. It has been very fairly conceded by the Counsel of the respondents that the question as to whether the goods in dispute fall within the definition of the 'capital goods' or not, require examination, in view of the law laid down by the Five Members Larger Bench of the Tribunal in CCE vs. Surya Roshni [2000 (42) RLT 817] wherein the bench has taken the view that for entitlement to modvat credit, the goods must satisfy either of the three conditions detailed in Explanation (1) of Rule 57 Q of the Rules as it stood at the relevant time. But the Commissioner (Appeals) had not so done. Therefore, the impugned order deserves to be set aside and the matter has to be sent back to the adjudicating authority for fresh decision in accordance with the law laid down in the above said case.

4. Consequently, the impugned order of the Commissioner (Appeals) is set aside. The case is sent back to the adjudicating authority for fresh decision, in the light of the above observations, after hearing of both the sides.

5. The appeal of the Revenue is accordingly disposed of, by way of remand.

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