

**Flex Industries Ltd. Vs. Cce, Indore**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-20-2001

**Reported in :** (2001)(129)ELT778TriDel

**Judge :** S V Technical

**Appellant :** Flex Industries Ltd.

**Respondent :** Cce, Indore

**Judgement :**

1. In these four appeals, filed by M/s Flex Industries Ltd, the issue involved is whether the Modvat Credit under Rule 57A is available in respect of evaporation boats and alternatively capital goods credit is available under Rule 57Q of the Central Excise Rules.

2. Shri Kailash Chander, Ld. Chartered Accountant, conceded at the outset that modvat credit under Rule 57A is not available in respect of evaporation boat in view of the decision of the Larger Bench of the Tribunal in the case of Melton India Ltd. Vs. CCE Meerut, 2000 (121) ELT 701 (T-LB.) He further, submitted that in reply dt. 16-1-97 to the show cause notice dt. 19-12-66, the Appellants had put an alternative plea that capital goods credit would be available to them as the evaporation boats were applicances or appartus as mentioned in Explanation 1 (a) to Rule 57Q; that they had requested for allowing the capital goods credit ignoring the minor procedural irregularities. He finally submitted that the Larger Bench of the Tribunal in the case of CCE Merrut Vs. Modi Rubber Ltd., 2000 (38) RLT 718,

has held that credit cannot be denied under Rule 57A only on the ground that declaration was filed in terms of Rule 57Q.3. Countering the arguments Shri M.D.Singh, Ld. SDR, submitted that the appellants have not claimed the capital goods credit under Rule 57Q in the Memorandum of Appeal filed by them in the Tribunal; that no prayer has been made by them for allowing the credit under Rule 57Q at all and as such there is no claim for the credit under Rule 57Q; that as the Larger Bench of the Tribunal in the case of Melton India has dis-allowed the modvat credit under Rule 57A in respect of ceramic boat used in the manufacture of metalized Polyester films, their appeals deserve to be rejected. In reply the Id. Chartered Accountant mentioned that in their Memorandum of Appeal, in Appeal No. E/217/98-NB, they have clearly mentioned that the credit under Rule 57Q would be admissible and the same ought to be allowed to them by ignoring the minor procedural irregularities; that in Appeal No. E/146/2000-NB they have clearly made averment in grounds of Appeal for eligibility to credit under Rule 57Q. Finally he relied upon the decision in the case of CCE Jaipur Vs. G.K. Synthetics 1999 (107) ELT 761 wherein it was held that Aircurtain was used in or in relation to manufacture of polyester fibre and it is immaterial whether the credit is allowed under Rule 57Q or under 57A.4. I have considered the submissions of both the sides. It has been held by the Larger Bench of the Tribunal in the case of Melton India Ltd. that the cermanic Evaporation Boats are appliances and cannot be treated as inputs used in or in relation to the manufacture of final product. Accordingly, Modvat Credit under Rule 57A of the Central Excise Rules is not available in respect of impugned goods. However, the Appellants even at the stage of reply to the show cause notice had claimed capital goods credit under Rule 57Q which has not been considered by the Adjudicating Authority. The Appellants have also shown that they had mentioned about their claim for capital goods credit under Rule 57Q in Appeal Memorandum and also in one appeal in the grounds of appeal also. As the claim had bene made by the Appellants even before the Adjudicating Authority, they cannot be restrained from raising the same before the Tribunal. Accordingly, all the matters are required to be remanded to the Adjudicating Authority to consider the eligibility of evaporation boats for capital goods credit under Rule 57Q of the Central Excise Rules. The fact that the Appellants had not filed the declaration under Rule 57Q cannot be taken as an

objection for not granting the capital goods credit as the declaration had been filed under Rule 57A and in the light of the Larger Bench decision in Modi Rubbers case, supra. Accordingly I remand all the four appeals to the Adjudicating Authority to decide afresh whether the Appellants are eligible to avail of capital goods credit in respect of evaporation boats. The appeals are allowed by way of remand.

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