

**Commissioner of Central Excise, Vs. M/S. Procter and Gamble**

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

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

**Appellant : Commissioner of Central Excise,**

**Respondent : M/S. Procter and Gamble**

**Judgement :**

1. These two appeals have been preferred by the Revenue against the common Order-in-Appeal dated 30.3.2000 passed by the Commissioner (Appeals) vide which he had upheld the order-in-original passed by the Assistant Commissioner allowing modvat credit of the disputed amount to the respondents on the goods in question by treating the same as capital goods falling under Rule 57 Q of the Central Excise Rules.
2. Ld. SDR has at the very outset contended that the impugned order of the Commissioner (Appeals) deserved to be set aside as it has not been passed in consonance of ratio of the law laid down by five Member Larger Bench of the Tribunal in CCE vs. Surya Roshni [2000 (142) RLT 817]. and the matter be sent back to adjudicating authority for deciding the modvat credit claim of the respondents afresh in the light of that judgement.
3. Ld. Counsel for the respondents has no objection if the matter is sent back to the adjudicating authority for deciding whether the goods in question fall within the definition of 'capital goods' under rule 57 Q read with Explanation I appended to that rule.

5. In CCE vs. Surya Roshni case (supra), Larger Bench of the Tribunal has referred to the provisions of Rule 57 Q, which were introduced by Notification No.4/94 CE dated 1.3.94 and Explanation (1) appended to this rule, which defines 'capital goods'. The law laid down earlier in Jawahar Mill case [1999 (32) RLT 379] regarding eligibility of modvat credit on the capital goods also been referred therein by the Bench.

6. Therefore the question whether the disputed the goods fall within the definition of the 'capital goods' in order to become eligible for the modvat credit, has to be considered by the adjudicating authority in the light of the ratio of law laid down in CCE vs. Surya Roshni (supra) by five Member Bench of the Tribunal. This has not been disputed by both the sides that the ratio of law laid down in that case, has not been taken note of by both the authorities below while allowing the modvat credit to the respondents 'on the goods' in question. Therefore, the impugned order of the Commissioner (Appeals) is set aside and matter is sent back to adjudicating authority for fresh decision in the light of observations made above after hearing both the sides and also after providing the opportunity to them for producing evidence if any they wanted to produce.

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