

Commissioner of Central Excise, Vs. Industrial Cables

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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 : industrial Cables

Judgement :

1. This appeal has been filed by the Revenue against the order dated 23.12.99 passed by the Commissioner (Appeals) vide which he had set aside the Order-in-Original of the Assistant Commissioner dated 31.12.98 disallowing the modvat credit of Rs. 2,38,612.69 to the appellants and imposing penalty of Rs.Two lakhs under Rule 173 Q on them.

2. The respondents were engaged in the manufacture of wires and cables falling under Chapter 85 of the CETA. They were served with a show cause notice dated 23.5.96 for recovery of the modvat credit of Rs.2,38.612.69 which they wrongly availed during the month of Septemeber, 1995. On receipt of their reply to that show cause notice wherein they tried to justify the taking of modvat credit by stating that their goods on which they had taken were capital goods covered by Rule 57 Q of the Central Excise. But the Assistant Commissioner did not accept their version and ordered the recovery of the amount in question and also imposed penalty on them as detailed above, through order in original. Feeling dissatisfied with that order of the Assistant Commissioner, the respondents approached the Commissioner (Appeals) by filing the appeal who accepted the same and reversed the order-in-original of the Assistant Commissioner by observing that there were

number of Tribunal decisions holding that wire and cable were eligible capital goods for the purpose of modvat credit.

3. Revenue has come up in appeal before Tribunal against the impugned order in appeal of the Commissioner(Appeals).

4. I have heard Shri A.K. Jain, SDR for the Revenue and Shri J.P.Kaushik, advocate for the respondents.

5. Ld. Counsel of the respondents at the very outset, contended that the appeal of the Revenue has no legs to stand, in view of the Larger Bench decision of the Tribunal in CCE Indore vs. Surya Roshni Ltd. [2001 (42) RLT 817]. But the Id. SDR on the other hand, has argued that the impugned order has not been passed by the Commissioner (Appeals) by taking into consideration the ratio of law laid down even in that case while allowing the modvat credit of the disputed amount to the respondents, on the wires and cables.

6. I have gone through the ratio of law laid down by the Larger Bench in Commissioner of Central Excise vs. Surya Roshni (supra). Regarding the wires and cables which were earlier held in Jawahar Mill case [1999 (32) RLT 379 as 'plant' the Larger Bench in Surya Roshni had observed as under:- 10. The observation made by this Tribunal in Jawahar Mills Ltd. case that wires and cables could be observed by the expression "plant" was objected to by the learned Departmental Representative.

According to him, by no stretch of imagination, can wires and cables be termed as "plant." Even conceding for argument sake the the said statement made by the learned Departmental Representative is correct, wires and cables if form components, spare parts or accessories of plant, will qualify for Modvat credit as capital goods. This is so because of clause (b) to the Explanation of "capital goods." 7. The bare perusal of these observation of the Bench, makes it clear that the wires and cables though on the face of it cannot be taken as 'plant' falling under clause 'a' appended to Explanation 1 of Rule 57 Q which defines 'capital goods', but still would be eligible for modvat credit if formed component, spare parts or accessories of the plant by virtue of clause (b) of the explanation. The

Assistant Commissioner as is evident from his order-in-original, recorded the findings that there was no material to show that wires and cables were being used for producing and processing the goods and as such were not covered by clause 'a' of the Explanation 1 to rule 57 Q of the Rules. He, for that reason, disallowed the modvat credit and imposed the penalty on the respondents. But the Commissioner (Appeals) in the impugned order had nowhere recorded the specified findings that the wires and cables were covered by clause a or b (as it stood at the relevant time) of the Explanation 1 to Rule 57 Q of the Rules. Therefore, his impugned order cannot be legally sustained, as the same cannot be said to be in consonance with the ratio of law laid down by the Apex Court in the case of CCE vs. Surya Roshni and as such deserves to be set aside.

8. However, since neither the Assistant Commissioner nor the Commissioner (Appeals) had considered the question as to whether wires and cables were covered by clause b of the Explanation (1), appended to rule 57 Q of the Rules, the matter deserves to be sent back for de novo adjudication, of the matter keeping in view the ratio of law laid down by the Larger Bench in the above referred case.

9. Consequently, the impugned order of the Commissioner (Appeals) is set aside and the matter is sent back to the adjudicating authority for fresh decision in the light of the discussions made above after hearing both the sides and allowing them opportunity to produce evidence, if any, they wished to produce, before him. The appeal of the Revenue stands allowed by way of remand.

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