

Commissioner of Central Excise, Vs. M/S. Fujitsu India Telecom Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-23-2001

Reported in : (2001)(136)ELT963TriDel

Appellant : Commissioner of Central Excise,

Respondent : M/S. Fujitsu India Telecom Ltd.

Judgement :

1. The respondents manufacture Digital Telephone Switching System and accessories classifiable under Chapter heading 8517.00. They availed MODVAT credit on certain Inputs/Capital goods under Rule 57A and 570 of the Central Excise Rules, 1944 which have been denied by the Additional Commissioner Central Excise, Chandigarh by his order dated 2.4.97. The total amount of credit is disallowed to the respondents by the Additional Commissioner in her order is Rs.63,017/-. The party filed an appeal against the above order of the Additional Commissioner and the Additional Commissioner (Appeals), Chandigarh vide his order dated 15.1.99, allowed the appeal of the party setting aside the order passed by the Original authority.

2. The Revenue are in appeal against the above order of the Commissioner. I have heard Shri Swatantra Kumar, JDR for the appellants and Shri Surinder Jain, Manager of the Respondent Company. My finding in respect of each of the items under consideration in this appeal are appended below : (i) Insertion Tool/Speed Wrap Tool, Coilite bit: It is contended that Commissioner (Appeals) has allowed the credit on this item under Rule 57Q as Capital goods which is not correct as the

eligibility of these goods as Capital goods were not the subject matter of this case. However, it is observed that the Commissioner (Appeals) has allowed the MODVAT credit on this item as inputs.

Therefore, the contention in the appeal factually is not correct.

(ii) Tool for MTU - It is contended that assessee has claimed the MODVAT credit on this item under rule 57A which is rejected by the original authority but the Commissioner (Appeals) has allowed the credit on this item under Rule 57Q. It is, therefore, stated that since the party has claimed the MODVAT credit under rule 57A as inputs, it cannot be allowed under rule 57Q. It is observed that the Larger Bench of the CEGAT in Para-13 in the case of Commissioner of Central Excise, Indore Vs. Surya Roshni Ltd., reported in 2001 (128) E.L.T. 293 (Tri. LB) has observed that those goods which are claimed as inputs cannot get MODVAT credit as Capital goods. Since the Commissioner (Appeals) has disallowed the MODVAT credit on this item under Rule 57A, the same cannot be allowed under Rule 57Q in terms of the cited observations.

(iii) Computer 486 Dx2 and Pentium based Computer system, Battery unit for Battery operated tool/AMP Crimpring Head, Microflat CI, surface Plate:- In respect of these items, it is contended that they do not fall within the definition of capital goods as provided under Rule 57Q and, therefore, no MODVAT credit is admissible on these items.

It is observed that in the above cited decision of Surya Roshini Ltd. case, the Larger Bench of the CEGAT has held that any machines, machinery, plant, equipment, apparatus, tools or appliances, if satisfy any one or more of the three conditions viz; (i) they must be used for the final product (ii) they must be used for processing any goods for the manufacture of final product or (iii) used for bringing about any change in any substance for the manufacture of final product, such capital goods will be entitled to MODVAT credit. Not only the complete machine, machinery, plant etc. but their component spare parts and accessories are also entitled to MODVAT credit. Since the order passed by both the lower authorities have not considered the issue, in view of the analysis laid/in/down in this decision of the CEGAT, the matter calls for looking into do novo.

3. Accordingly, the appeal of the Revenue in respect of the Item at Serial No.(i) above is rejected, and in respect of Serial No.(ii) above is allowed. In respect of other items at Serial No.(iii) the matter is remanded to the original authority by setting aside the orders appealed against for de-novo consideration in the light of the guide lines as stated above.

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