

Vikram Ispat Vs. Commissioner of Central Excise,

Vikram Ispat Vs. Commissioner of Central Excise,

SooperKanoon Citation : sooperkanoon.com/21834

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-28-2001

Appellant : Vikram Ispat

Respondent : Commissioner of Central Excise,

Judgement :

1. The application 2460 is for waiver of deposit of penalty of Rs 70,000/- and the application 2461 is for waiver of deposit of penalty of Rs 30,000/-, imposed on the applicant. The duty in both cases has been paid.

2. The duty has been demanded, and penalty imposed on the finding of the Assistant Commissioner, confirmed by the Commissioner (Appeals), that structures and materials such as steel sheets use in these structures are construction equipment and therefore not capital goods as defined in Rule 57Q. It is the contention of the counsel for the applicant that these goods used as a support for conveyer system of the applicant conveying raw materials and are therefore capital goods. He relies upon the decision of the Tribunal in New J.K. Cement Works vs CCE 3. The departmental representative says that these goods are nothing other than constructional materials and hence not entitled to modvat credit, as held in Vivek Alloys Limited vs CCE 1998 (98) ELT 156. In New J.K. Cement Works vs CCE the Tribunal had, without noticing the decision in Vivek Alloys Limited vs CCE held that supporting structures of steel and chock cables used by the appellant in manufacture of clinkers and cement, as a part of the plant. The contention before me is that these structures are accessories of

conveyer system. The decision of the Tribunal in Vivek Alloys Limited vs CCE passed in December, 1997, held that for steel, mild steel rounds and angles used to construct a building which held the machinery of the appellant before is would not be capital goods.

5. At this stage there to be a conflict between these decisions. If the components of the binding used to house a plant are not capital goods, it is prima facie difficult to see how the same component used to support machine become capital goods.

6. Taking all these aspects into account and the fact that duty has been paid, I direct the applicant to deposit Rs 20,000/- towards penalty in the application 2460 and Rs. 10,000/- towards penalty in application 2461 within a month from a day. On such deposit, I waive deposit of the remaining amount of penalty in both the cases and stay their recovery.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com