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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Apr-09-2001

Reported in : (2001)(133)ELT203Tri(Chennai)

Appellant : C.C.E. Tiruchirapalli

Respondent : M/S Elf Atochem Peroxides (i) Ltd.

Judgement :

1. This is a Revenue appeal against the order in Appeal No. 124/98(T) dated 30.10.98 passed by the Commissioner (Appeals). He has held that Electronic Digital Scale and unjackted vessel are used to draw the desired quantity of raw-material from bulk storage tank before it is put into process. He further held that the electric motors were used for pumping the water in the water treatment plant and the cold storage rooms. The flow of the liquid has to be at a designed controlled speed and the measure of such flow with accuracy is an absolute necessity.

The spare kit for valve positioner was essential for the above purposes. Therefore, after due consideration of the detailed working of the equipment he had held them to be capital goods for the manufacture of final product covered within the definition of capital goods under rule 57Q. He has also held that denial of the credit based on the original invoice where the duplicate was lost in transit is admissible as the assessee has proved about the loss. In this appeal, the Revenue is not challenging the second portion of the order pertaining to availability of Modvat credit on the documents. The main ground is that these goods do not

come within the definition of capital goods.

2. Shri S.Sudarsan, learned DR reiterates the grounds of appeal and the citations referred to therein.

3. The learned Counsel for the respondents submits that these citations were prior to the larger bench judgement of the Tribunal examining the issue. He refers to the larger bench judgement in the case of CCE vs.

Surya Roshni Ltd. as reported in 2001 (128)ELT 293 and also the judgement of the North Regional Bench in the case of CCE Meerut vs.

Coolade Beverages Ltd. reported in 1998 (99) ELT 239 wherein it has been held that Electronic Weighing Machine is eligible to Modvat Credit. The larger bench in the case of Jawahar Mills reported in 199 (108) ELT 47 discussed the scope of the definition of capital goods and have analysed and held that any equipment or machinery which is essential for the purpose of manufacture final product falls within the definition of capital goods. He submits that there is no merit in the appeal and seeks for dismissal of the appeal.

4. On consideration of the submissions made I find that the as submitted by the learned Counsel for the respondents, the Commissioner (Appeals) had in detail examination of the function of each of the item vis-a-vis the manufacturing process had noted that the manufacturing process cannot be carried on without the use of this equipment and had clearly noted that the goods fall within the ambit of capital goods under Rule 57Q. This issue pertaining to grant of Modvat Credit on Electronic Weighing Machine had also been considered by the larger bench in the case of Surya Roshini (supra) and also in the case of Jawahar Mills (supra) and the larger bench has held that the item is required to be granted Modvat Credit as capital goods. In the light of these two larger bench judgements, I do not find any infirmity in the impugned order and there is no merit in the Revenue appeal and the same is dismissed.

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