**Cce, Meerut Vs. M/S Jindal Polytester and Steel Ltd.**

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**SooperKanoon Citation** : sooperkanoon.com/22091

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

**Decided On :** Apr-12-2001

**Appellant** : Cce, Meerut

**Respondent** : M/S Jindal Polytester and Steel Ltd.

**Judgement** :

1. The present appeal is posted for mention as the decision of the Larger Bench in the case of CCE, Indore vs Surya Roshni Ltd., 2001 (42) RLT 817 (CEGAT-LB), on the capital goods was awaited. That decision has been announced and reported. Both the sides agree that the appeal itself be heard today on merits. Therefore, we proceed to deal with appeal on merits.

2. The issue involved in the present appeal relates to the availability of modvat credit on the disputed goods as detailed in the order-in-original and the show cause notice. The respondents were engaged in the manufacture of Synthetic Filament Yarn and on checking their record it revealed that they availed modvat credit on the disputed goods by projecting them as capital goods under Rule 57-Q of the Rules, but it was found that these goods did not satisfy the definition of 'Capital Goods' under Rule 57-Q read with Explanation I appended to it. The Additional Commissioner, therefore, vide his order-in-original disallowed the modvat credit of Rs 2 lakhs on the respondents' company. He also imposed a penalty of Rs 20,000/- on the Director and Rs 25,000/- on the General Manager of the respondents' company. This order of the Additional Commissioner was, however, modified by the Commissioner (Appeals) through the impugned order

when the respondents filed appeal against the order-in-original before him.

3. It has been fairly conceded by both the sides that the issue as to whether the goods in dispute satisfy the definition of 'Capital Goods' under Rule 57-Q read with Explanation-I of the Rule requires redetermination at the end of the adjudicating authority in view of the law laid down by the Larger Bench of this Tribunal in the case of CCE, Indore vs Surya Roshni Ltd., supra. Therefore, we accordingly set aside the impugned order of the Commissioner (Appeals and sent back the matter to the adjudication authority for fresh decision in the light of the law laid down by the Larger Bench of this Tribunal, referred to above, after affording a reasonable opportunity to both the sides to present their case. The appeal of the Revenue is accordingly stands allowed by way of remand.