C.C.E., Indore Vs. M/S. H and R Johnson (India) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-19-2001

Appellant : C.C.E., Indore

Respondent : M/S. H and R Johnson (India) Ltd.

Judgement :

1. This matter relates to the modvat credit amounting to Rs. 3,28,775/- availed by the respondents on the items "alumina ceramic grinding media and grinding media" falling under Chapter heading 6801.00 and 6907.00 respectively as capital goods under the provisions of Rule 57-Q. The respondents manufacture "ceramic glazed tiles" falling under Sub-heading No. 6906.10. The Asst. Commissioner of Central Excise, Ujjain Division initiated proceedings against the respondents for denying the aforestated amount of modvat credit availed by them on the above stated items. The respondents pleaded before him that these are used in the grinding balls for the purpose of "grinding of raw materials" namely "Body & Glaze Grinding" which are used in the manufacture of final products "Ceramic Glazed Tiles". They further submitted that these items are essentially used in relation to the manufacture of final products. They also stated that these items improve the grinding efficiency, says energy improve quality and productivity and therefore these are essentially required in relation to the manufacture of final product without which it is not possible to manufacture and market their final product.

The Asst. Commissioner vide his Order dt. 28.8.97, however, denied the modvat credit under Rule 57-Q with the observation that the provisions of Rule 57-Q as prevailing on the date of availment of modvat credit did not cover these items as "capital goods" within their scope.

Accordingly, he confirmed the demand of Rs. 3,28,775/- on the respondents and further imposed a penalty of Rs. 30,000/- on them. On appeal, the Commissioner (Appeals), Customs & Central Excise, Bhopal vide his Order dt. 31.10.2000/7.11.2000 allowed the appeal of the party by setting aside the order passed by the lower authority.

2. The Revenue are in appeal against the order of the Commissioner (Appeals). I have heard Shri S. Kumar, JDR for the appellants. The respondents are not represented despite the notice. I have considered the submissions made before me. It is observed that the Larger Bench of CEGAT in the case of C.C.E. Indore vs. M/s. Surya Roshni Ltd. Reported in 2001 (128) ELT 293 (Tri.-LB) have laid down clear parameters of the definition of the capital goods as stipulated under the provisions of Rule 57-Q. Further, Hon'ble High Court of Madras in their judgement in the case of M/s. SIV Industries Ltd. vs. CCE, Coimbatore reported in 2001 (129) ELT 48 (Mad.) have also pronounced their views in this matter. In this view of the matter, therefore, it is considered imperative that the admissibility of the modvat credit on the impugned items as capital goods should be considered de-novo by the Original Authority in the light of the above said decisions. Accordingly, the order passed by the Commissioner (Appeals) is set aside and remanded the matter to the Original Authority for passing a de-novo order in view of the above observations. The respondents shall be afforded a reasonable opportunity of hearing before taking a final view in the matter.