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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-2001

Appellant : Cce, Chandigarh

Respondent : M/S. Pratap Steel Rolling Mills

Judgement :

1. The Revenue has prayed that the following questions of law arising out of the Final Order No./A/946-948/98-NB (SM) dated 3.8.1998 be referred to the Hon'ble Punjab & Haryana High Court:- "Whether Ramming Mass, Refractory motors and Fire Clay Refractories declared as inputs under Rule 57-A covered in the excluded category of items in terms of explanation to Rule 57A could be legally eligible for the benefit of modvat.

The terms machine, machinery, plant, etc. have been used in exclusion clause (i) in a general sense. If their constituents are taken as inputs where the plant and machine is not, then the exclusion clause will be superfluous and meaningless".

2. In this appeal filed by the Revenue, the inputs were ramming mass and Fire Clay Refractories. The Commissioner of Central Excise (Appeals) following the Tribunal's decision in the case of M/s. A.B. Tools Ltd.- 1994 (1) RLT 474 (Tribunal) had allowed the modvat credit with regard to ramming mass. As regards the Fire Clay Refractories, he had allowed the modvat credited subject to the verification that such refractories had actually been put to use in the maintenance of furnace in the form of powder of fire clay or chemicals and not in the form of bricks or blocks i.e. as a constructional material. Following the decisions of the Calcutta

High Court, Karnataka High Court and that of Tribunal, the Tribunal had referred to para-4 of the Order dated 3.8.98. The Tribunal has rejected the appeal filed by the Revenue.

3. After hearing both the sides, I consider that the matter has already been settled by the decisions referred to above. I may also refer to the Karnataka High Court decision in the case of Escorts Ltd. Vs.

CCE,Bangalore-2000 (120) ELT 75 (Karnataka), wherein the High Court while disposing of the reference by the Tribunal had held that the ramming mass and fibre glass filter mesh being chemical and resins were eligible for credit. (refer paras 6 and 7 of the said order).

4. In view of the settled position of law, I do not consider that the reference is required to be made. The Reference Application filed by the Revenue is dismissed. Ordered accordingly.

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