

Commissioner of Central Excise Vs. Baker Mercer Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-03-2001

Reported in : (2002)(140)ELT412Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Baker Mercer Ltd.

Judgement :

1. In the order impugned in this appeal by the department, the Commissioner (Appeals) has held that various measuring and checking instruments, which the respondent purchased for use in its factory, would not be entitled to be considered capital goods under Rule 57Q. He however held that by application of the ratio of the decision of the Tribunal in TELCO vs. Collector 1994 (70) ELT 75, they would be entitled to be considered as inputs within the meaning of Rule 57A and credit specified therein available.

2. The challenge to this conclusion is on the ground that the goods were not inputs as specified in Rule 57A and the Tribunal's decision that the Commissioner has relied upon has been appealed. The second ground itself is insufficient. However, it is brought to my notice that the decision of the Tribunal is no longer good law in the light of the decision of the larger bench in CCE vs Surya Roshni 2001 (42) RLT 817.

This decision was rendered by the larger bench which was set up in order to resolve, what it appears to be, a conflict between the ratio of the larger bench in

Union Carbide India Ltd vs CCE 1996 (15) RLT 144 and Jawahar Mills Ltd vs CCE 1999 (32) RLT 379. This decision does not refer to the decision of TELCO and does not touch upon the decision of TELCO. It is therefore difficult to say that it has over ruled the ratio of that decision.

3. In my view, the ratio of the decision in TELCO appears to require reconsideration. The ratio is that measuring and checking instruments do not by themselves produce or process any goods or bringing about any change in any substance for the manufacture of the final product. In other words, the activity of checking or measuring does not bring about any change in any substance. This however is too simplistic. Obviously, the measuring instruments are employed in order to ensure that the goods at any particular stage of production conform to the dimensions or other physical or chemical specifications required for the manufacturing process. If the result shows that they do not, they may be subjected to processes to bring about any change in dimension. It would therefore not be correct to say that they are not used for the purpose of bringing about any change in any substance.

4. However, I do not propose to ask for reconsideration of this decision. This is for the reason that credit would be available to the goods under Rule 57Q. The larger bench in Jawahar Mills Ltd vs CCE has endorsed numerous decisions of the Tribunal holding that capital goods as defined in Rule 57Q would include machine, machinery, apparatus etc which, although they themselves do not bring about any change in any substance or produce any goods, are essential for the processes in the factory in which such change takes place. The goods therefore rightly ought to have been considered capital goods.

5. In this view of the matter, I do not find any reason to interfere with the Commissioner (Appeals) order and dismiss the appeal.

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