

M/S Sail Vs. Cce, Jsr.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Jul-18-2001

Appellant : M/S Sail

Respondent : Cce, Jsr.

Judgement :

1. We have heard Shri S.P.Majumdar, Id.adv. for the appellants and Shri Chaturevedi, Id.SDR for the Revenue.
2. Vide their impugned orders, the authorities below have denied the benefit of modvat credit to the appellants in respect of lubricating oils and greases for the period July to September 1997 on the ground that the appellants had claimed them as inputs in terms of rule 47A, whereas the same were covered as capital goods under rule 57A, whereas the same were covered as capital goods under rule 57Q w.e.f. March 1997. Inasmuch as there was no declaration filed under 57T(1), modvat credit cannot be allowed to them.
3. The appellant's contention is that prior to the said period, they had filed a declaration under the provisions of rule 47G claiming lubricating oils as modvatable inputs under the provisions of rule 57A. Earlier also the dispute i.e. either the lubricating oils are modvatable inputs or not was going on with the central excise authorities. Shri Majumdar submits that now the larger Bench of the Tribunal in the case of Modi Rubber -2000(119) ELT 197 has held that the lubricating oils were eligible modvatable inputs prior to 1.3.97.

He submits that the Tribuna, in a number of cases has also held that filing of a declaration under rule 57G will not deprive the assessee for claiming the modvat on the inputs so declared as capital goods irrespective of the fact that no declaration was filed under rule 57T. As such he submits that the modvat in respect of lubricants is available to the assessee.

4. We find a lot of force in the above submissions of the appellants.

The larger Bench of the Tribunal has held that lubricating oils are eligible under rule 57A. In any case the Commissioner (Appeals) has himself recorded that w.e.f. 1.3.97 the lubricating oils were covered under the provisions of rule 57Q. The period involved in the present appeal is from July to September 1997. As such the modvat credit in respect of lubricants is available to the appellants in terms of provisions of rule 57Q. Inasmuch as there is already a declaration under rule 57G, the modvat credit in respect of lubricants, in our view, should not be denied to the appellants on the technical ground that no separate declaration is not filed under rule 57T. 5. We also find that a small amount of credit of Rs.1,15,560/- (rupees one lakh fifteen thousand five hundred and sixty) was denied on the ground that the same was taken after a period of six months from the date of issuance of the invoice. While fairly agreeing that the said issue stands decided against the appellants by the larger Bench decision of the Tribunal in the case of Kusum Ingots -2000(39)RLT 440(CEGAT-LB), Shri Majumdar submits that the said restriction will not apply in respect of capital goods. Inasmuch as the lubricants have been held to be capital goods after 1.3.97, the restriction of availing credit within a period of six months from the date of issuance of the show cause notice would not be relevant. In this connection he also draws our attention to the Board's circular no.199/33/96-CX dt.23.4.96 clarifying that the time limit of six months as prescribed under second proviso to rule 57G will not apply to availment of credit on capital goods under rule 57T of Central Excise Rules, 1944. He submits that the provisions of rule 57T were amended subsequently to introduce the time limit of six months.

6. By taking the above submission of the Id.adv. into account and the circular of the Board and the fact that there was no time limit under the provisions of rule 57T

during the relevant period, we hold that denial of credit of Rs.1,15,560/-(rupees one lakh fifteen thousand five hundred and sixty) is not justified.

7. Shri Majumdar submits that another quantum of Rs.5,674/-(rupees five thousand six hundred and seventy four) which has been disallowed on the ground that a portion of the electricity has been consumed by them in their residential premises, has already been debited by them. He is not disputing the said portion of the order confirming the demand on the above ground.

8. In view of the foregoing, except for an amount of Rs.5,674/-(rupees five thousand six hundred and seventy four), we set aside the impugned order passed by the authorities below and allow the appeal with consequential relief to the appellants. Penalty of Rs.,00,000/-(rupees one lakh) is also set aside.

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