

Polyplex Corporation Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-20-2002

Reported in : (2002)(84)ECC808

Judge : B T K.K.

Appellant : Polyplex Corporation Limited

Respondent : Cce

Judgement :

1. The appellants manufacture polyester film and polyester chips falling under Chapter 39, The Deputy Commissioner of Central Excise, Rampur, vide his order dated 22.3.2000 has denied them the modvat credit of duty of Rs. 2,79,173 availed by them during the month of June 1999 and July 1999 on the items viz. Gas Pressure Spring and Loaded Source P.M.--147 (Radio Active Source) as capital goods under Rule 57Q of Central Excise Rules, 1944. He has observed in his order that the Flat Springs are parts of dies. He has observed that in the Table annexed to Rule 57Q, the dies and moulds are mentioned at Sl. No. 6; that as per Sl. No. 5 of this Table, the components, spares and accessories of the goods specified against Sl. Nos. 1 to 4 of the Table alone are admissible for credit and since the flat springs are part of the dies specified at Sl. No. 6. hence they are not eligible to the benefit of modvat credit under this Rule. As regards the item Radio Active Sources, he has observed that this item is classifiable under Sub-heading No. 2844.00; that it is used to measure film thickness during online processing and is an inorganic chemical which is a fully consumable item. It is observed that this is

not a spare, component or an accessory of the machinery and being an inorganic chemical the modvat credit is not admissible on this item under Rule 57Q of Central Excise Rules, 1944.

2. The party filed an appeal but the Commr. (Appeals), Ghaziabad, vide his order dt. 30.1.02 rejected the appeal of the party upholding the order of the original authority.

3. This appeal is against the impugned order of the Commr. (A). I have heard Shri V. Swaminathan, Advocate for the appellants and Shri H.C.Verma, JDR for the respondents. I have considered the submissions made before me by both the sides. The Ld. Counsel for the appellants does not dispute that the item Flat Spring is part of the dies and dies and moulds are specified at Sl. No. 6 of the Table annexed to Rule 57Q. He also does not dispute that by virtue of Sl. No. 5, the parts, components and spares to the item specified at Sl. Nos. 1 to 4 of the Table alone are eligible for the modvat credit under this Rule. It is however contended by him that this is a part of the die which is fitted and used in the TDO machine and as such it is eligible for availing the modvat credit under Rule 57Q. I find no merit in this contention. The moulds and dies find a separate entry at Sl. No 6 of the Table annexed to Rule 57Q for the purpose of availing the modvat credit thereon. Only the parts, components and spares of the items specified at Sl. Nos. 1 to 4 of the Table are eligible for the modvat credit. Since the moulds and dies are not one of the items specified at Sl. Nos. 1 to 4, their spares, components and accessories are not eligible to the modvat credit. As regards the modvat credit on Loaded Sources, it is contended that this is a radio active material which is used in the instrument-Nucleometer-for measuring thickness of the film. It is contended that Nucleometer falls under-Heading No. 90.91 and Loaded Source fitted into it is a part and parcel of the Nucleometer. It is observed that neither of the lower authorities in their respective orders have given adequate consideration to the nature and function of this item in the manufacturing process undertaken by the appellants.

The observation that Loaded Source is classified under Heading No.28.44 and therefore it is an inorganic chemical-in itself is factually not correct. The description

under Tariff Heading 28.44 reads, "Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and isotopes) and their compounds; mixtures and residues containing these products." Whether the item itself as a radio active element would be eligible for availing the modvat credit under Rule 57Q is to be considered in view of the definition of capital goods under this rule and its nature and function in the manufacturing process undertaken by the appellants. Since the matter has not been examined in this perspective, it calls for going back to the original authority for de novo consideration and passing an order afresh. In view of this analysis, the appeal relating to the modvat credit on Flat Spring is rejected and the case for modvat credit on Loaded Source is remanded to the original authority as above.

4. Cross objections filed by the respondents are also disposed of in the same terms.

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