

Commissioner of C. Ex. Vs. Mukund Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-16-2002

Reported in : (2003)(153)ELT63Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of C. Ex.

Respondent : Mukund Ltd.

Judgement :

1. The question for consideration in this appeal by the assessee is the eligibility to Modvat credit under Rule 57Q of the duty paid on ramming mass. In the order impugned in the appeal, the Commissioner (Appeals) has held that the product falls under Rule 57A and therefore, cannot be capital goods defined in Rule 57Q. The appeal by the Commissioner contends that the Commissioner (Appeals)'s order holding that refractory bricks were capital goods within the meaning of Rule 57Q is incorrect.

2. So far as ramming mass is concerned, even if it is held that it is not capital goods within the meaning of Rule 57Q, credit would be available under Rule 57A. The fact that the appellant had not declared this as an input under Rule 57A would not stand in the way of such credit. The decision of the Larger Bench of the Tribunal in CCE v. Modi Rubber Ltd. - 2000 (119) E.L.T. 197 is authority for the proposition that a declaration filed by an assessee in terms of Rule 57Q is sufficient for purpose of extending credit under Rule 57A.3. The objection by the

department is to the extension of credit to the order of the Commissioner (Appeals) holding refractory bricks as capital goods. The first contention that it is in the nature of structural material is difficult to accept. Refractory bricks are used to line ulterior walls of a furnace so as to form a layer of thermal insulation. Such refractories in fact get used into, and are required to be replaced. It is not possible to accept that they fall within the definition of the term of capital goods. This takes us to second objection that refractories was specifically included in the definition of capital goods contained in Rule 57Q by amendment made on 16-3-1995 and therefore it has to be concluded that prior to this they were not capital goods.

4. Capital goods were defined at the relevant time as meaning machines, machinery, plant, equipment, apparatus, tools or appliances used or produced for processing of any goods of bringing about any change in any substance for the manufacture of final products, components and spare parts and accessories of these goods, moulds and dyes, generating sets and weigh bridges through the factory of manufacture. The amendment made on 16-3-1995 enlarges the definition, by specifying various goods as capital goods (in addition to the definition already cited above). These additions appear to have been made *ex abundanti cautela*. Thus, for example, if capital goods includes machines used or produced for processing any goods and internal combustion engines were so used, there was no requirement to specify these goods. Apart from this the definition contained in clause (a) of Explanation 1 under Rule 57Q(1) was wide enough at the relevant time to include refractories as components of any machines, machinery etc. The amendment made on 16-3-1995 including refractory cannot be read so as to restrict the definition which would, by the ordinary meaning, apply.

5. Appeal E/728/96 allowed. Appeal E/1218/96 dismissed. Consequential relief in accordance with law.

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