

**Sail Vs. Ccex.**

**Sail Vs. Ccex.**

**SooperKanoon Citation :** [sooperkanoon.com/29881](http://sooperkanoon.com/29881)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

**Decided On :** Jan-20-2003

**Reported in :** (2003)(88)ECC281

**Judge :** A Wadhwa

**Appellant :** Sail

**Respondent :** Ccex.

**Judgement :**

1. After dispensing with the condition of pre-deposit of duty, I take up the appeal itself as the issue lies in a narrow compass.

2. Modvat credit in respect of dumpers and dozers have been disallowed to the appellants on the ground that the same do not qualify as capital goods. Shri B.J. Mookherjee, Ld. Advocate appearing for the appellants, submits that the issue is no more res-integra and it has been held by the various decisions of the Tribunal, that the said dumpers and dozers for transportation of the raw materials in the appellants own factory are capital goods. He draws my attention to the Division Bench decision of the Tribunal in the case of Commr. of Central Excise, Chandigarh v.ACC Ltd. wherein bull-dozers were held to be eligible capital goods by observing that the credit is admissible on the raw materials handling equipments. Following the ratio of the above decision, I hold that the dumpers and dozers qualify as capital goods for the purposes of modvat credit.

3. Further modvat credit has been disallowed in respect of cables used to connect different functional computers/logistic system to function synchronisingly. Shri Mookherjee places on record on the Larger Bench decision of the Tribunal in the case of Jawahar Mills, 32 RLT 379 which stands confirmed by the Hon'ble Supreme Court as reported in .....

..... He also draws my attention to the Hon'ble Madras High Court's decision in the case of SIV Industries Ltd. v. CCEx, Coimbatore, 2001 (76) ECC 151 (Mad.): 2001 (43) RLT 523 (Mad.) wherein wires and cables used for transmission of electric energy from sub-station to blowers which were used to take out noxious gas from the plant were held to be eligible capital goods under the provisions of Rule 57Q. The Hon'ble High Court also observed that the definition of Rule 57Q takes within its scope all facilities other than land and building, necessary and incidental for the production and the processing which result in the manufacture of final product. The appellants have clarified that they are getting modvat credit in respect of computer/logistic system for which these Cables are used. After hearing Shri T.K. Kar, Ld. SDR, I find that the above referred decision fully covered the disputed issue.

Accordingly, I hold that the Cables are entitled to modvat credit under the provisions of Rule 57Q. A small portion of the modvat credit in respect of soda ash has been disallowed on the ground that the same has been availed on the basis of endorsed invoices. I find that the Larger Bench of the Tribunal in the case of Balmer Lawrie & Co. Ltd. and Ors.

v. Commr. of Central Excise, Kanpur and Ors., RLT 1403 (LB-CEGAT) has held that such modvat credit on the basis of endorsed invoices is not available. As such, I disallow the credit availed on the basis of endorsed invoices.

4. An amount of Rs. 49,203 has been disallowed in respect of ferro silicon on the ground that the appellants could not produce the invoices. Shri Mookherjee now submits that they have been able to get the invoices which was not available at the relevant time and prays that the matter be remanded for verification of the said invoices. In view of the fact that the appellants now possessed the invoices, I set aside the said portion of the impugned order and remand the matter of the

Assistant Commissioner to examine the invoices in question and then decide the issue of availability of modvat credit accordingly.

5. An amount of Rs. 16,200 has been disallowed on the soda ash on the ground that the declaration has been made under the provisions of Rule 57Q and there is no provisions to convert the said declaration into a declaration under Rule 57A. Shri Mookherjee, refers to the Larger Bench decision of the Tribunal in the case of Commissioner of Central Excise & Customs, Meerut-I v. Modi Rubber Ltd., 2000 (119) ELT 197 (Tri-LB) laying down that the declaration filed by the assessee in terms of 57Q of Central Excise Rules, 1944 is sufficient for the purposes of extending credit of lubrication under Rule 57A. As such, I am of the view that the modvat credit cannot be disallowed on the ground that the declaration was not filed under Rule 57A but was filed under Rule 57Q. Inasmuch as the availability of credit has not been examined from other angles, I set aside the impugned order and remand the matter to the Assistant Commissioner for examining the availability of modvat credit on soda ash under the provisions of Rule 57A.6. Appeal is thus disposed of in the above manner. Stay petition also gets disposed of.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**