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C.M. Smith and Sons Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-19-2003

Reported in : (2003)(156)ELT282Tri(Mum.)bai

Judge : K Kumar

Appellant : C.M. Smith and Sons

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. Shri H.R. Shah, Manager is present on behalf of the appellants. He submitted that both the appeals relate to denial of Modvat credit on lubricating oil and Steel Shots. Shri M.H. Sheikh, learned JDR appearing on behalf of the Revenue fairly concedes that he has no objection for grant of Modvat credit so far as Steel Shots is concerned in view of the decision in the case of Shivaji Works Ltd. v. Collector of Central Excise, Aurangabad - 1996 (88) E.L.T 678 (Tribunal). As regards the lubricating oil, the contention of the ld. JDR is that it was a HSD and not lubricating oil. It will not be covered in the inputs and Modvat credit cannot be allowed on this. Even if it is lubricating oil it will not qualify as input under Notification 8/95, dated 16-3-1995 because it is classifiable under sub-heading 2710.90.

2. Shri H.R. Shah, Manager appearing on behalf of the appellants could not bring to my notice any case law or the provisions under which the said Mod-vat credit on HSD could be allowed.

3. After hearing rival submissions and perusal of the records, the Mod-vat credit is allowed on the Steel Shots as mentioned above. So far as the HSD/lubricating oil is concerned, I uphold the Order passed by the lower authorities. Thus, the appeals are disposed of accordingly.

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