

**Commissioner of Central Excise Vs. Shree Prithvi Rolling Mills (P)**

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

**Decided On : Jun-20-2003**

**Reported in : (2003)(89)ECC407**

**Judge : A T V.K., P Chacko**

**Appellant : Commissioner of Central Excise**

**Respondent : Shree Prithvi Rolling Mills (P)**

**Judgement :**

1. The issue involved in this Appeal filed by Revenue is whether MODVAT credit of the duty paid on capital goods is available to M/s. Shree Prithvi Rolling Mills (P) Ltd. 2. When the matter was called, no one was present on behalf of the respondents inspite of notice nor there was any request for adjournment. It is also observed that the notice has been duly received by the respondents as per acknowledgement duly received back from the postal authorities. We also observe that when the Appeal was posted for hearing earlier on 3.4.03, no one was present on behalf of the respondents. We, therefore, take up the Appeal for disposal after perusing the records and hearing Ms. Charul Baranwal, learned Senior Departmental Representative.

3. Learned Senior Departmental Representative, submitted that the respondents had taken MODVAT credit of the duty paid on weighing bridge; that on verification by the Central Excise officer, it was found that the said weighing bridge was installed outside factory premises; that as the weighing bridge has been installed

outside the factory premises, MODVAT credit in terms of the provisions of Rule 57Q of the Central Excise Rules, 1944 is not available to the respondents.

She relied upon the decision of the Supreme Court in the case of Jay Pee Rewa Cement v. CCE, 2001 (77) ECC 457 (SC) : 2001 (133) ELT 3 (SC) wherein the MODVAT credit of the duty paid has been disallowed in respect of the capital goods used outside the factory in view of the provisions of Rule 57Q. She finally submitted that the reliance of the Commissioner (Appeals) on the decision in the case of CCE Rajkot v. Ashok Iron and Steel Fabricators, 2003 (87) ECC 668 (LB) ; 2002 (140) ELT 277 (Tri) and in case of Raghuvvar (India) Ltd. v. CCE Jaipur, 2002 (140) ELT 280 (Tri) are not applicable to the facts of the present matter as in these cases, the credit was availed and utilized during the period when the final products were dutiable and subsequently the final products got exempted; that in the case of present Appeal, the facts are different as the weighing bridge has been installed outside the factory premises.

4. We have considered the submissions of learned Senior Departmental Representative and perused the records. The respondents had installed weighing bridge on 31.5.97 and have taken the MODVAT credit of the duty paid thereon. Subsequently, when the respondents came under the purview of the Compounded Levy Scheme under Section 3A of the Central Excise Act, they had changed the boundary of their factory premises and weighing bridge came to be outside the factory premises and was used for commercial purpose. It is thus apparent that the weighing bridge has now been removed from the factory and in view of the provisions of Rule 57S of the Central Excise Rules, 1944 the duty is payable by them.

We agree with the learned Senior Department Representative that the decisions of the Larger Bench of the Tribunal in the case of Raghubar (India) Ltd, and Ashok Iron and Steel Fabricators are not applicable as the facts are entirely different. We, therefore allow the Appeal filed by the Revenue.

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