Garware Polyester Ltd. Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-13-2003

Reported in : (2004)(165)ELT538Tri(Mum.)bai

Judge : S T Gowri

Appellant : Garware Polyester Ltd.

Respondent : Commissioner of Customs and

Judgement :
1. The question for consideration in these appeals is the eligibility for consideration as capital goods in terms of Rule 57Q of certain items used by the appellant in its factory. In the order impugned in the appeal, the Commissioner (Appeals) has held that since these items were not used for producing or processing or bringing about any change in any substance for the manufacture of final product, they would not qualify for consideration as inputs.

2. The appellant is absent and unrepresented and requested adjournment on the ground of short of time to prepare for the case. I note however that there is no short of time and therefore decline to adjourn.

3. The items in consideration are capacitor, electrical cables, measuring gauge and motor controls. The Commissioner (Appeals) has recorded the use of these items in his order. The measuring gauge is used to measure the vacuum in the reactor for polymer intake. The capacitor is part of the power supply system which

controls the total process of manufacture. Motor control centre appears in the centre of a switch board which controls intake power to motor of blowers. The cables carry electricity to various machines in the factory.

4. It is clear from this description that although these items were not directly participated in any specified process or production, their presence in the appellant's factory is essential for the manufacture of final product. By applying the ratio of the Supreme Court's judgment in CCE v. Jawahar Mills 2001 (1320 ELT 3, these items would be entitled for qualification as capital goods.

5. The other items in question are rating RPM jolts, plug tunnel diverter, cable frays, measuring instruments, kothorimeter, electric motor, power supply and fuse holder.

6. The fuse holder is used for holding the fuse. It protects control panel used in the factory. The rating RPM is an induction motor. Plug tunnel diverter is used in the pneumatic chips conveying the system.

Cable trays provide support to the electric cables. Kathorimeter is a measuring instrument used with the machines for processing polyester chips.

7. Credit has been denied on the two electric motors on the ground that their value was not shown separately in the invoices. The appellant contends that the value has in fact been shown in the invoice, although not against the description of the goods. The copies of the two invoices No. 22803 dated 8.4.1995 and No. 22816 dated 29.4.1995 are enclosed to the appeal to indicate some value. Since, however, the original has not been produced, I think it appropriate to remand the matter to the jurisdictional authority for consideration of this point.

8. In the result, therefore, the appellant is entitled to credit in respect of only items except with regard to the two electric motors referred to in order-in-original No.95/96 dated 11.7.1996 of the Additional Commissioner, disposed of in order-in-appeal No. 384/96/3427 dated 17.9.1997 of the Commissioner (Appeals). The Additional Commissioner shall pass orders solely on the point raised by the appellant referred to above, in accordance with law.