Commissioner of Central Excise Vs. R.H. Founders and Engineers and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-25-2003

Reported in : (2004)(166)ELT334Tri(Mum.)bai

Judge : S T Gowri

Appellant : Commissioner of Central Excise

Respondent : R.H. Founders and Engineers and

Judgement :

1. In the order impugned in this appeal, the Commissioner (Appeals) has said that the credit could be taken under Rule 57Q of the duty paid on sand mix muller, a machine which is used for preparing sand moulds.

2. The credit had been denied by the order of the Assistant Commissioner on the ground that sand moulds being exempted from duty, the capital goods would not be considered to have been used in or in relation to the manufacture of the finished excisable goods. It is the requirement of Rule 57Q that for credit to be taken capital goods must be used in the manufacture of dutiable finished goods. Sub-rule (2) of Rule 57R contains an exception to this rule. It provides that credit cannot be denied on the ground that exempted or nil rated intermediate product come into existence during the course of manufacture of final product and it is this rule that the Commissioner (Appeals) has relied upon.

3. In my view, he has wrongly relied upon this rule. Sand mix muller is used only to make the sand moulds. Insofar as this machine is concerned, the sand mould is the final product; intermediate product arose in he manufacture or not is not clear. It cannot therefore be said that sand mix muller is used in the manufacture of castings in the course of which intermediate product, sand mould arose.Ramkrishna Steel Industries v.CCE 1995 (82) ELT 575 said that although sand moulds were exempted from duty, the duty paid on chemicals used to make the sand which is used in the manufacture of mould would be available as credit to be used for payment of duty on castings for the reason that the sane moulds were used in or in relation to the manufacture of the final product, i.e.

steel castings, then covered by the terms of Rule 57A. It therefore did not consider it necessary to go into the question of whether the sand moulds were intermediate products. Rule 57Q does not use the words "in or in relation to the manufacture of final product" finds in Rule 57A.The larger bench decision is no authority to apply Rule 57G (2) which relates to intermediate products. I am not concerned in this appeal with the applicability of Rule 57A.5. In the case of appeal E/768/98 another issue for consideration is whether cold box core which is used to make sand core which are again used in the manufacture of metal castings can be considered as capital goods. The above reasoning would apply in this case also.

6. Accordingly, the appeals are allowed and the orders of the Commissioner (Appeals) are set aside. The orders of the adjudicating authority are restored except to the extent of penalty of Rs 500/- imposed on R.H. Foundry & Engineers.