Cc and Ce Vs. S and H Gears Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-26-2003

Reported in : (2004)(91)ECC159

Judge : A T V.K.

Appellant : Cc and Ce

Respondent : S and H Gears Ltd.

Judgement :

1. This is an appeal, filed by Revenue, against Order-in-Appeal No.120/2003 dated 31.3.2003 by which the Commissioner (Appeals) has allowed the Modvat Credit on certain capital goods to M/s. S & H Gears Ltd. 2. When the matter was called no one was present on behalf of the Respondents. I, however, observe that they have filed Cross Objection requesting for the dismissal of the appeal filed by the Revenue. I, therefore, heard Shri S.C. Pushkarna, learned DR. and perused the records. The Commissioner (Appeals) under the impugned Order has allowed the Modvat Credit in respect of capital goods namely Spider, spacer sleeves and bar grid, lifting bars, etc. on the ground that these are accessories of furnace and are being used as fixtures on which gears/pinions are fixed/placed before being put inside the furnace for heat treatment process. The learned SDR submitted that the impugned goods are not accessories of furnace as they have no role in its operation or function; that even in absence of these goods furnace will run. He also mentioned that as the Modvat declaration has not been filed in respect of bottom spider and middle spider the Modvat Credit cannot be allowed in view of

the decision of the Larger Bench of the Tribunal in the case of Avis Electronics Pvt. Ltd., 2000 (117) ELT 571 (Tribund-LB), 3. I have considered the submissions of the learned DR and perused the Cross Objection filed by the Respondents. I observe that the Commissioner (Appeals) has very categorically given his finding that the impugned goods are accessories and are very much essential to prevent deformity/damage of gears due to high temperature inside the furnace. The production of gears is not possible without furnace and furnace cannot give effective production without the use of these accessories. The Revenue has not made any averment to controvert this specific finding of the Commissioner (Appeals) except merely stating that the furnace can run without the help of these accessories.

Accessory is of subordinate importance. It aids or contribute in secondary way. Certainly the furnace or any machine can work without accessories because accessory is something which contribute to effectiveness of an equipment without changing the basic function.

Accordingly and in view of the findings of the Commissioner (Appeals) Modvat Credit will be available in respect of the impugned goods being accessories. There is no force in the submissions of the learned DR that Modvat Credit cannot be availed of without filing of declaration in view of the decision of the Larger Bench in the case of Kamakhya Steels P. Ltd. v. CCE, Meerut, 2000(40) RLT 575 (CEGAT-LB). Further, the provisions of Rule 57G and 57T have been amended by Notification No. 7/99-CE(NT) dated 9.2.99. These amendments have been clarified by the Board under Circular No. 441/7/99-CX dated 23.2.99 wherein it has been mentioned that these rules have been amended so as to empower the Asst. Commissioner to allow Credit of duty paid on capital goods ignoring minor procedural lapses in filing the declarations, if the Asst. Commissioner is satisfied that the capital goods have suffered duty and are being used in the process of manufacture. It is not the case of the department that capital goods in question have not suffered duty or are not being used in the process of manufacture. Accordingly the Modvat Credit is available to the Respondents. I, therefore, reject the appeal filed by the Revenue. As no new averment has been made in the Cross Objection filed by the Respondents the same also stands disposed of.