

**Bajaj Auto Ltd. Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/32483](http://sooperkanoon.com/32483)

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

**Decided On :** Sep-30-2003

**Reported in :** (2003)(111)LC157Tri(Mum.)bai

**Judge :** S T S.S.

**Appellant :** Bajaj Auto Ltd.

**Respondent :** Cce

**Judgement :**

1. Aggrieved by the order of Commissioner (Appeals) denying therein capital goods credit under Rule 57Q on: i) Environmental Test Chamber required for carrying out various test on parts/components/products as per national./international specification to ensure the quality.

ii) Housing Plunger, which is a part of forklifts truck used for material handling.

On the grounds that the item at Section No. (i) supra and the forklift are not articles used in or in relation to the manufacture/production and processing of any goods or bringing about any deny in any substance for the manufacture of the same products.

2. I find there is force in the submission of the appellants that it is for the user to determine whether an item qualifies or not the requirements of Clause (2). Explanation I to Rule 57Q as held by the Apex Court the case of CCB, Coimbatore v. Jawahar Mills Ltd. and Ors.

2001 (45) RLT 739 (SC) wherein in para 6 it has been held: We have no difficulty in accepting the contention of the learned Additional Solicitor General that, under these circumstances user will determine whether on item qualifies or not the requirement of Clause (a).

Following the same, the credit in this case cannot be denied. Moreover, testing equipment and material handling equipment have been held to be eligible capital goods by this Tribunal.

3. In view of the above this appeal is allowed after setting aside the order.

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