# The Commissioner of Central Vs. Lloyds Metals and Engineering

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

**Decided On :** Oct-06-2003

**Judge** : A Wadhwa, S T S.S.

**Appellant** : The Commissioner of Central

**Respondent** : Lloyds Metals and Engineering

**Judgement** :

1. The Revenue in the present appeal has challenged that part of the Commissioner's order vide which he had allowed the benefit of modvat credit in respect of Silo Encasing, Dust Collection System and Pint Oil Liner.

2. We have heard both sides duly represented by Shri A. Chopra, Ld. JDR for the Revenue and Shri Vishal Agarwal, Ld. C.A for the respondents.

3. The Commissioner while extending the benefit to Silo Encasing has held as under :- "Silo encasing falling under sub-heading No.8419.00 are used with Day Bin Silos. These encasings are required for fixing the silos at their place of installation. For manufacture of sponge iron, huge quantity of raw material is to be continuously fed to the rotary kiln. To avoid production loss due to interrupted supply of raw material and for segregation of raw material from the direct reduction process, day bins along with conveyers, weigh feeders, motors and control panels are installed near the rotary kiln. The raw material requirement of the day is fed into these bins from where the supply to the rotary kiln can take place. Undoubtedly the Day bin is a part of production machinery required for continuous

production of sponge iron. The encasing is an essential part of the said kiln. The classification of the silo encasing also shows that the item is part of the day bin system. Since day bin is an essential machinery in the production process and is eligible for credit under Rule 57Q, a part thereof is undoubtedly eligible for modvat under the scheme for modvat on capital goods. I, therefore, allow credit of Rs. 3,73,647/- availed by the Noticee on such reactor encasings." 4. We find that the issue is no more res-inegra, the Tribunal in the case of (T) and Addison Paints & Chemicals Ltd., v. CCE, Chennai (1999 (110) ELT 951 (T)} has held that storage tanks for the raw materials are the capital goods used in relation to the manufacture of final products, thus making them entitled to modvat credit in terms of the provisions of Rule 57Q. We see no reason to take a different view.

5. As regards the Dust Collection System, the Commissioner has held that the said system is basically pollution control equipment used for removing dust generated during the process of manufacture of sponge iron. The equipment is installed near the crushing station, or magnetic separators, coal screening station, etc. as per statutory requirements under pollution control laws. He also relied upon the Hon'ble Supreme Court's decision in the case of Indian Farmers Fertilizers Coop. Ltd., v. CCE, (1996 (86) ELT 177 (SC) laying down that the apparatus used for such treatment of effluent in a slant manufacturing a particular end product is part and parcel of the manufacturing process of that end product. The Revenue's contention is that since the said decision was given in the context of an exemption notification, the same is not applicable. However, we find that the Tribunal in the case of Century Cements Ltd., v. CCE, Raipur reported in 1997 (95) ELT 655 (T) has held that dust collecting bags/filter bags being used for collection of dust for prevention of air pollution have, to be treated as part and parcel of manufacturing process of cement and are eligible to the benefit of modvat credit as capital goods under Rule 57Q of Central Excise Rules, 1944. To the same effect is an another decision of the Tribunal in the case of Ipitata Sponge Iron Ltd., v. CCE, Bhubaneswar, reported in 1998 (104) ELT 339 (Tri) wherein dust collection filter bags for de-dusting system were held to be eligible capital goods for the purposes of modvat credit. Inasmuch as the issue is no more res-integra we find no merits in the Revenue's contention on this court.

6. As regards the modvat credit in respect of Pint Oil Liner, the Revenue has contended that since the same is used for repair and maintenance of the pollution control equipment, the same would not earn the modvat credit. We find that the Tribunal in the above referred decision of the Ipitata Sponge Iron Ltd., has held that the goods used for maintenance and for cleaning of the system would not be eligible for modvat credit as capital goods. Subsequently, the larger Bench of the Tribunal in the case of Jaypee Rews Plant v. CCE, Raipur reported in 2003 (57) RLT 739 (CEGAT-L.B) has laid down the welding electrode and the gases used in repair and maintenance of plant and machinery are not eligible inputs as the same are not used in relation to manufacture of final product.

7. Ld. representative of the respondents have agreed on the factual position that the said Pint Oil Liner is used for repair purposes. As such following the ratio of the above decision we set aside the portion of the impugned order passed by the Commissioner extending the benefit of credit in respect of Pint Oil Liner.

8. In a nutshell appeal of the Revenue in respect of Silo Encasing and Dust collection system fails and succeeds in respect do of the Pint Oil Liner.