SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Carbon Everflow Ltd. Vs. Cce

Carbon Everflow Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/32919

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-03-2003

Reported in : (2004)(112)LC145Tri(Mum.)bai

Judge : S T Gowri

Appellant : Carbon Everflow Ltd.

Respondent : Cce

Judgement :

1. In the order impugned in the appeal, the Commissioner (Appeals) has confirmed the view taken by the Assistant Commissioner that electric overhead travelling crane installed in the appellant's factory did not comply with the definition of capital goods as contained in the explanation below Sub-rule (1) of Rule 57Q and hence the duty paid not available as credit under that rule.

2. The counsel for the appellant relies upon the decisions of the Tribunal in Man Structurals Ltd. v. CCE 1996 (16) RLT 580 and in CCE v.Uttam Industrial Engineering Pvt. Ltd. and also upon judgment of the Supreme Court in Jawahar Mills Ltd. v. CCE .

3. The departmental representative contends that the ratio of the decision of the Tribunal in Telco v. CCE would apply to the facts of this case and thus support the Commissioner (Appeals) order.

4. The reason that the Commissioner (Appeals) advances, in holding that crane did not qualify for consideration as capital goods, is that they were not used for producing or processing any goods or for bringing about any change in any substance in the manufacture of the final product, the words contained in Clause (a) of Sub-rule (1) of the Explanation below Rule 57Q. The two decisions of this Tribunal cited by the appellant are specific and cranes qualify for consideration as capital goods.

5. There are, in fact, many other decisions of the Tribunal holding various goods which are items of machinery usually does not satisfy the definition contained in the parts of the explanation to Rule 57Q to be capital goods. General view that the Tribunal has taken in these decisions that, although each of these items except directly produce or process any substance or for bringing about any change in any substance, the emergence of the finished goods in the factory of the manufacture could not be possible without the use of such machines. The crane in question certainly satisfies these requirements. The brochure put by the appellant shows, that the weight of the heat exchangers go as high as 6300 kilograms and the condition that it is required for assembling of large and heavy components that make up these heat exchangers (that the assembly large and heavy components of such heat exchangers cannot be technologically viable without the use of electric overhead travelling crane.

6. In its decision cited by the departmental representative, the question before the Tribunal was whether material handling equipment and other equipment would be entitled to exemption contained in notification 217/86. The decision cited by the departmental representative the majority bench of the Tribunal held that material handling equipment (among other goods) could not be disentitled for credit under Rule 57A. The Collector in his order impugned before the Tribunal had held that since the goods are machine, machinery etc they would fall within the exclusive Clause (i) of the explanation below Rule 57Q(1). The Tribunal, by a majority view, noted that while the goods were no doubt covered by the term "machine, machinery etc", the exclusive clause did not apply to goods which were not used for producing or processing any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products. If that

contention were to be accepted, it would follow that the goods if not eligible for credit under Rule 57Q, would become eligible under Rule 57A since they do not fall within the scope of the exclusion. The decision of the Tribunal that credit under Rule 57A can be claimed and granted even if the manufacturer has not specifically claimed under Rule 57A but under Rule 57T, contained in CCE v. Modi Rubber 7. The appellant was therefore entitled to credit. Appeal allowed impugned order set aside.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com