

**Central Engineering Works Vs. Commissioner of Central Excise**

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

**Decided On :** Nov-20-2003

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

**Appellant :** Central Engineering Works

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. (a) The assesseees are engaged in manufacturing of Diesel Oil Engine and Centrifugal Pump Sets falling under chapter 84 of the Schedule to the Central Excise Tariff Act, 1985.

b) For manufacturing of Centrifugal Pump Sets, they are purchasing Centrifugal Pump from the open market and are coupling the same on a common base plate along with the Diesel Oil Engine manufactured within the factory. The department was of the view that the Diesel Oil Engine is exempt under Notn. No. 8/86, 4/97 and similar other notifications, when used in manufacturing of Centrifugal Pump Sets and therefore, invoked the provisions of Rule 57CC.c) In appeal to the Tribunal, it was claimed that the Diesel Oil Engine, does not get any exemption under the notifications referred and therefore, the provisions of Rule 57CC are not applicable. After considering the facts, the Tribunal allowed unconditional stay under Order No. C-II/58-60/WZB/2001 dtd. 04.01.2001.

d) On this very issue, the department had raised the demand in the case of M/s. Patel Field Marshal Industries, Rajkot. The demand raised were dropped by the

Commissioner (A), Ahmedabad under Order in Appeal No.721 to 724/2000/Commr.(A)/Rajkot. The department had filed an appeal against the said order. On this issue, the Commissioner (A), Rajkot took a contrary view and confirmed the view of the department.

Therefore, an application for early hearing was moved and after considering the facts of the case and the submission made, this Tribunal has taken the view that the Diesel Oil Engine, when used in manufacturing of Centrifugal Pump Sets, are not exempt under the aforesaid notification and the provisions of Rule 57CC are not applicable. This decision in the case of M/s. Patel Field Marshal Industries, Rajkot has been reported in {2003 (58) RLT 916}.

e) The issue is also covered by the decision of this Hon. CEGAT in the case of Pushpam Forgings v. CCE {2002 (48) RLT 107} which has also been accepted by the Hon. Supreme Court.

2. Since the issue under consideration has been settled, this appeal on Rule 57C demands and penalty is to be allowed after setting aside the order.

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