

Commissioner of Central Excise Vs. Procter and Gamble (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-17-2003

Reported in : (2004)(167)ELT124Tri(Mum.)bai

Judge : S T Gowri

Appellant : Commissioner of Central Excise

Respondent : Procter and Gamble (i) Ltd.

Judgement :

1. The assessee took on 9-10-1996 credit under Rule 57Q of the duty paid by its manufacturer on 28-6-1996 on vapour absorption heat pump.

Notice issued to the assessee proposed denial of the credit on the ground that the goods being classifiable in Heading 84.18 were specifically excluded from consideration as capital goods under the explanation below 57Q(1). The Asstt. Commissioner denied the credit on this ground. On appeal from this order, the Commissioner (Appeals) allowed the credit on two grounds that they were included in the definition of capital goods and they have been used in the manufacture of the finished product. Hence this appeal by the Commissioner.

2. Rule 57Q as it stood on the date on which credit was taken defined capital goods in explanation below Sub-rule (1) of Rule 57Q. Clause (a) paragraph 1 of the definition of the explanation specified all goods falling under Heading Chapter 84 other than those specifically excluded in that clause to be capital goods. Among

these are goods classifiable those falling in 84.18. On the date on which credit was taken therefore these were not capital goods.

3. The contention of the Counsel for the respondent that when the duty was paid on these goods, the definition of capital goods was differently worded and the goods were capital goods on that date is not very significant. Rule 57Q(1) makes it clear that the provision of Section AAAA of Chapter V apply for the purpose of allowing credit for the duty paid on capital goods used by the manufacturer in his factory and utilising the credit towards payment of duty on final product on the capital goods. Thus what would be relevant for deciding the admissibility to credit therefore is the date on which such credit was taken by the manufacturer, and not on that date on which the goods were cleared by the manufacturer. The credit could not have been taken.

4. The appeal is accordingly allowed and the order of the Commissioner (Appeals) set aside. The order of the Asstt. Commissioner insofar as it relates to these goods is restored.

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