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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-13-2004

Reported in : (2004)(173)ELT418Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Perfect Spinners

Judgement :

1. This is revenue's appeal against the order-in-appeal passed by the learned Commissioner (Appeals). The dispute in this case relates to extension of capital goods modvat credit under Rule 57Q of the Central Excise Rules 1944 to an instrument known as "Electronic Yarn Evenness Tester". The adjudicating authority disallowed the credit on the ground that the equipment is not such which brings about any change in the material nor does it produce or process any goods and hence does not meet the eligibility criteria prescribed in Rule 57Q of the Central Excise Rules 1944. It is conceded in the order-in-original that, the said goods are utilised for quality control and marketability purposes, but holding the same to be outside the eligibility criteria prescribed in Rule 57Q, the credit was denied. The credit was also denied on the ground that the Tester was shown on the supplier's invoice as classified under Chapter Heading No. 84.71 of Central Excise Tariff and not a testing equipment of Chapter Heading No. 9031.00.

2. The learned Commissioner (Appeals) relying on the judgment of the CEGAT in the case of DCL Polyesters Ltd. v. CCE Nagpur reported in 1998 (101) ELT 78 (Tri.) allowed the appeal. In the revenue's appeal against the impugned order, it is pleaded that the CEGAT judgment in the case of DCL Polyester (Supra) has been challenged by filing a reference application. Hence the learned Commissioner (Appeals) ought not to have placed reliance thereon and allowed the appeal. It is also pleaded that the respondents have not demonstrated the similarity between the tester" in the DCL case and their own case. It is also claimed that the goods of heading, No. 84.71 were specifically excluded from the definition of the capital goods.

3. Hence both sides I have carefully considered all the submissions and find that none of these have any merit. In the findings of the adjudicating authority it has been conceded that the "tester" is used for quality control purposes. It is not used for bringing about any change in the material or processing or producing any goods. When this position is accepted, then the goods squarely qualify to be "inputs" being used in or in relation to manufacture of final product. If the claim under Rule 57Q for credit fails, simultaneously the claim for credit under 57A generates. In the circumstances, credit could not be denied.

4. Secondly, the Commissioner was bound to follow the CEGAT judgment in the case of DCL polyester, having been specifically pronounced against him. It was for the Commissioner to bring about the distinction between the "tester" disallowed in the CEGAT judgment and that of the respondents and to show that functionally the appellant's tester does not meet the principles laid down in the said judgment.

5. Thirdly mere filing of reference application against the CEGAT judgment has no effect of over ruling the judgment. No stay also has been obtained.

6. The last objection relates to exclusion of goods of heading 84.71.

The respondents have pleaded that though the correct classification of the product is under Heading No. 9031.00, but since, the supplier had shown classification under Heading No. 84.71, the credit should not be denied. The respondents also claimed that only certain items of refrigeration and air conditioning falling under the heading 84.71 were excluded. Leaving the controversy at that, as I observed, the eligibility of the item having been decided under Rules 57Q in the CEGAT judgment or alternatively under Rule 57A, as analysed by me, the denial of credit can not be justified.

7. Revenue appeal is accordingly required to be-rejected. Hence rejected.

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