

**The Commissioner of Customs and Vs. Indian Seamless Metal Tubes Ltd.**

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

**Decided On :** Feb-10-2004

**Judge :** M T K.D.

**Appellant :** The Commissioner of Customs and

**Respondent :** Indian Seamless Metal Tubes Ltd.

**Judgement :**

1. The Revenue appeal is directed against the impugned order-in-appeal passed by the Commissioner (Appeals) whereby the extension of credit to "thermofluid oil" and "Hydraulic oil" is contested on the ground that these are not in the category of either lubricant, greases, cutting oil and coolants. The functions of thermofluid oil is as heat transfer agent and not as the lubricant and the hydraulic oil is a media for transmission of force in the functioning of the respective machinery.

Also, it can not be treated as an accessory or component part of a machine as held by the Commissioner (Appeals) in his findings.

3. The appellants have placed reliance on the CEGAT judgments reported in 2000 (120) ELT 250 (Tri.LB) in the case of Tamilnadu Petro Products Ltd., Vs. Collector of Central Excise, Madras, wherein modvat credit in respect of heat transfer oil is held as eligible input for modvat credit under Rule 57A of the Central Excise rules, 1944. So far as the hydraulic oil is concerned the Tribunal's judgment in the case of the very same respondents has held that hydraulic oil is eligible input under Rule 57A, for taking credit. The judgment is reported in 2003-TAXINDIAONLINE-

192-CESTAT-MUM in the case of Indian Seamless Metal & Tubes Ltd., Vs. Commissioner of Central Excise, Aurangabad. Reliance is also placed on CEGAT judgment reported in 1999 (105) ELT 339 (Tri) in the case of Melton India Vs. Collector of Central Excise, Meerut-II wherein it is held that if an item is otherwise covered by modvat credit, its eligibility could be considered under appropriate rules by concerned authority even if declaration is made under incorrect rules.

4. In the light of the submissions, I find that the revenue appeal is without any merit. Accordingly the revenue's appeal is rejected.

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