The Commissioner of Central Vs. Arya Ship Breaking Co. Ltd. and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-01-2004

Judge : P Chacko

Appellant : The Commissioner of Central

Respondent : Arya Ship Breaking Co. Ltd. and

Judgement :

1. These appeals of the Revenue are against a common order Passed by the Commissioner (Appeals) in respect of two different ship breaking agencies. The respondents in these appeals had imported ships for the purpose of ship breaking activity, and incidentally paid CVD on certain "oils" viz., diesel oil, lubricating oil and fuel oil. The importers had taken Cenvat credit of CVD paid separately on the said "oils". Show cause notices were issued to them proposing to disallow the credits.

The original authority upheld the proposal and demanded the duty equivalent to Cenvat credit. It also imposed penalties on the parties.

The first appellate authority held that duly equivalent to Cenvat credit of CVD paid on high speed diesel oil or motor spirit was recoverable from the parties. The respondents are not aggrieved by this order of the Commissioner (Appeals). The grievance of the department in the present appeals is not clearly discernible from the memorandum of appeal. Ld. DR has, however, argued at length on the admissibility of Cenvat credit on various 'oils' which were imported along with the ships and cleared separately by the parties. These arguments are, by and large, based on two circulars of the Board, which have been referred to by the Commissioner (Appeals) in the impugned order. The counsel for the respondents would submit that the dispute thrown up by the show cause notice stands settled against them and therefore, the appellant-Revenue can have no grievance whatsoever. After a perusal of the relevant show-cause notices. I accept this submission of the counsel. The show-cause notices proposed to disallow the Cenvat credit of CVD to the respondents only in respect of those "oils" specifically excluded from the definition of "input" under Rule 57AA (d) of the Central Excise Rules, 1944. The lower appellate authority has clearly found that "motor spirit" and high speed diesel stood specifically excluded from the definition of "input" under Rule 57AA. The lower authorities have disallowed Cenvat credit in respect of these goods, against which the respondents have no grievance. I am at a loss to understand as to how the Revenue is aggrieved in this case. Ld DR has vehemently argued for denial of Cenvat credit in respect of "other oils". I have already noted that any "other oil" was not subject matter of the show-cause notices. Admissibility of Cenvat credit in respect of the so-called "other oils" is a question beyond the scope of the relevant show cause notices.