

Darshan Vanaspati Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-15-2004

Reported in : (2005)(119)LC332Tri(Delhi)

Judge : M T K.C.

Appellant : Darshan Vanaspati

Respondent : Cce

Judgement :

1. In this appeal, the appellants have contested the denial of modvat credit on oxygen compressor and thrister controlled transformer rectifier on the ground (i) that the reasons given by the lower authorities for denying the credit are beyond the scope of show cause notice, (ii) that the oxygen compressor is used to compress the hydrogen gas and transformer rectified is used for manufacture of hydrogen gas from the electrolytic cells when the DC current is produced through this rectifier. It was held by the lower authorities that since the hydrogen gas is used captively for manufacture of hydrogenated edible oil, therefore it is exempted under notification No. 67/95 dated 16.3.1995. Hence, it is not entitled for credit. The appellants pleaded that the Central Board of Excise and Customs has issued circular F. No. B-4/7/2000-TRU, dated 3.4.2000 and Circular No.665/56/2002-CX dated 25.9.2002 clarifying that Cenvat credit should not be denied if inputs are used in any intermediate products even if such intermediate product is exempt from payment of duty. The Cenvat credit should not be denied on the capital goods used in manufacturing of intermediate goods exempt from

payment of duty which are used captively in the manufacture of finished goods chargeable to duty. In the present case, the finished goods i.e., hydrogenated edible oil is their finished products. Therefore, in view of these circulars and also the decision of the Tribunal in *Bharat Forge Ltd. v. CCE, Pune-III* , they are eligible for movat credit.

2. Shri P.M. Rao, learned JDR, appearing for the Revenue pleaded that the findings of the lower authorities are not beyond the scope of the show cause notice. However, he agrees that in view of the Board's circulars, the credit is not deniable to the appellants. Since both the disputed items of capital goods are used in the manufacture intermediate products which in turn is used for the manufacture of final products chargeable to duty, the credit on the capital goods cannot be denied in view of the Board's circulars mentioned above.

Therefore, the order of the Commissioner (Appeals) disallowing the credit on oxygen compressor and thristor controlled transformer rectifier is set aside and consequently, the penalty is also set aside.

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