Datar Switchgear Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-29-2004

Reported in : (2005)(192)ELT1129Tri(Mum.)bai

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Datar Switchgear Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal is directed against the order of Commissioner of Central Excise, Aurangabad. In the impugned order the Commissioner denied modvat credit on items listed 1 to 10 in the show cause notice for three different reasons to which we shall advert to later in this order.

2. The appellant is a manufacturer of goods falling under chapter No.85 of CETA. They have availed of modvat credit on capital goods on the items listed 1 to 10 in the show cause notice. The Commissioner denied credit on various items for the reasons given hereunder; He denied capital goods credit on the computer on the ground that the same does not come under capital goods. The appellants' contention is that the computer is a works station and is a part of Rapid Proto Type Machine.

The appellant contends that since Rapid Proto Type Machine is a capital goods its part i.e. computer without which the machine cannot work is capital goods. We observe that the appellant procured the computer separately and during the course of hearing it was brought out that the computer is used for the propose of operating software supplied along with the machine. Thus the main function of the computer in the present case is no different from any other data processing machine. The appellant contention that the proto type machine cannot work without the computer is not even substantiated. The Tribunal in the case of Shriram Vinyl & Chemical Indus. v. Commissioner of Central Excise, JaipurWipro Ltd. v. Commissioner of Central Excise, Bangalore [2000 (120) E.L.T. 502 (Tribunal)] and N.G.E.F. Ltd v. Commissioner of Central Excise, Bangalore-II [2002 (149) ELT 768 (Tri.Bang.)] held that computers cannot be considered as capital goods to be eligible for modvat credit under Rule 57Q. The period dispute in this case is March 1995. At that time goods used for producing or processing of any goods or for bringing about any charge in any substance for the manufacture of any final product alone are entitled for modvat credit under Rule 57Q. We hold that the Commissioner has rightly denied a credit on the computer.

3. In so far as the items listed from 2 to 5 the Commissioner denied the modvat credit as the appellant failed to follow the statutory requirement of Rule 57T according to which a declaration has to be filed at least within 90 days of the receipt of the goods into the factory. In respect of these items the appellant did not file the required declaration on the ground that he has not installed them . The Tribunal in the case of Commissioner of Central Excise, Shillong v.Halmira Tea Estate [2001 (138) ELT 349 (Tri.Kolkata)] held that the Assistant Commissioner cannot condone the delay exceeding three months.

In the present case the delay in filing the declaration has exceeded three months and so condonation is not possible under the statute. The credit in regard to these items is rightly denied.

2. In respect of items mentioned from 6 to 10 in the show cause notice the credit was denied on the ground that the appellant did not seek condonation of delay, while filing the declaration under Rule 57T. We hold that the Assistant Commissioner is empowered to condone delay of less than three months. Had the appellant applied for such condonation the department would have certainly

condoned the delay. We hold that denying the credit only because the appellant had not sought the condonation of delay is unwarranted. We therefore hold that the appellant is entitled to capital goods credit on items serially numbered 6 to 10 in the show cause notice.

3. In regard to penalty we hold that the Commissioner imposed the penalty under Rule 57U of the Central Excise Rules. We observe that under the facts and circumstances of this case no penalty is warranted and therefore we set aside the penalty imposed.

(b) Credit taken on invoices at serial No. 6 to 10 in the show cause notice is admissible.