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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-31-2004

Reported in : (2005)(99)ECC686

Judge : K P S.S., a T V.K.

Appellant : Hindustan Copper Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this appeal, filed by M/s. Hindustan Copper Ltd., is whether they were eligible to take the Modvat Credit of the duty paid on MM. Rounds.

2. Shri B.L. Narasimhan, learned Advocate, submitted that the Appellants manufacture copper and products thereof and avail of Modvat Credit of the duty paid on inputs as well as Capital goods; that the copper ore obtained from mines is subjected to crushing, grinding and floatation in the concentrator plant to produce copper concentrate; that the process of grinding is done firstly in rod mills and secondly in ball mills to reduce the size of ore from 25 mm to 200 mm; that for this purpose grinding rods and grinding balls are used in the rod and ball mills as grinding media; that they procure grinding rods from M/s.

Visvesvaraya Iron & Steel Ltd.; that the description of the grinding rods in the invoice was shown as M.M. Rounds; that they claim the Modvat Credit of the duty paid on grinding rods as inputs under Rule 57A of Central Excise Rules, 1944; that however, the Asst. Commissioner informed them that grinding rods are Capital goods covered under Rule 57Q of the Central Excise Rules and they have to file a declaration under Rule 57T and not under Rule 57G of the Central Excise Rules; that accordingly they filed another declaration under Rule 57T declaring the grinding rods as Capital goods; that subsequently in 1998 show cause notice was issue to them for disallowing the Modvat Credit on the grinding rods taken during the period, July 1997 to December 1997; that the Asst. Commissioner confirmed demand by disallowing Modvat Credit on the ground that grinding rods falling under Sub-heading 7228.30 of the Schedule to the Central Excise Tariff Act do not constitute Capital goods and they have not filed an declaration; that the Commr. (Appeals) also under the impugned Order has rejecteel their appeal.

3. The learned Advocate submitted that the Modvat Credit on grinding rods is admissible under Rule 57A of the Central Excise Rules as input as the grinding rods are used in or in relation to the manufacture of their final product. He relied upon the decision in the case of CCE, Bolpur v. Durgapur Cement Works, 1997 (90) ELT 197 (Tri) wherein it has been held by the Larger Bench of the Tribunal that Steel balls are most essential for manufacturing process of grinding used in the manufacture, and steel balls are eligible for Modvat Credit under Rule 57A. Reliance has also been placed on the decision of the Tribunal in the case of HMP Cements Ltd. v. CCE, Belgawn, 2000 (69) ECC 739 (Tri) : 2000 (117) ELT 549 (Tri) and Birla Corporation Ltd. v. CCE, Raipur, 2001 (135) ELT 175 (Tri.-Del.). Finally he submitted that they had filed the declaration under Rule 57T of the Central Excise Rules as per the direction of the Department and as per the decision of the Larger Bench of the Tribunal in the case of CCE v. Modi Rubber Ltd., 2000 (70) ECC 444 (LB): 2000 (38) RLT 718 the Credit is admissible under Rule 57A even through (sic, though) declaration was filed under Rule 57Q of the Central Excise Rules.

4. Countering the arguments Shri H.C. Verma, learned DR, reiterated the findings as contained in the impugned Order.

5. We have considered the submissions of both the sides. It has not been disputed by the Revenue that the impugned goods, M.M. Rounds procured by them, are used in rod mills and ball mills for reducing the size of copper Ore which is one of the process of getting their final product, copper concentrate. The Appellants initially claimed Modvat Credit in respect of these M.M. Rounds as inputs under Rule 57A by filing declaration under Rule 57G. Subsequent on the direction of the Department in 1995 they filed the declaration under Rule 57T claiming the impugned rounds as Capital goods. The learned Advocate has shown the Modvat declaration filed under Rule 57T on 22.2.96. Thus, the Revenue cannot say that the declaration was not filed by the Appellants for claiming the Modvat Credit. The learned Advocate has also drawn our attention to Asst. Collector's letter dated 23.11.95 in which they were directed by the Asst. Commissioner to file the declaration under Rule 57T in respect of grinding media balls/rods. The eligibility of grinding media as inputs has been settled by the Larger Bench of the Tribunal in the case of Durgapur Cement Works wherein it has been held that "Steel balls are most essential for the process. One of manufacturing processes is grinding. Grinding takes place on account of the impact of steel balls on the raw material. ....It can be safely held that they are used in or at any rate, in relation to the manufacture of the final product and hence, inputs. In subsequent decisions relied upon by the learned Advocate the Tribunal has allowed the Modvat Credit on grinding media under Rule 57A of the Central Excise Rules. Accordingly we set aside the impugned Order and allow the appeal.