

**Wilway Fort Indian Ltd. Vs. Cce**

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

**Decided On :** Feb-03-2005

**Reported in :** (2005)(191)ELT616TriDel

**Judge :** A T V.K.

**Appellant :** Wilway Fort Indian Ltd.

**Respondent :** Cce

**Judgement :**

1. The issue involved in this appeal filed by M/s. Wilway Fort India Ltd. is whether the Modvat Credit of the duty paid on Evaporation Boat is available to them during the period May, 1992 to February, 1994.

2. Shri Mohan Lal, learned Advocate, submitted that Evaporation Boat (crucible) is a consumable and does not fall in the category of capital goods and as such exclusion clause of Rule 57A of Central Excise Rules, 1944 does not apply; that the Appellants manufacture metallised polyester film, 'Metallised lacquered polyester film'; that metallisation process is carried out in a vacuum chamber; that a very thin layer of Aluminium gives an excellent barrier to light, water vapour, oxygen and other gases; that the process of metallising plastic film involves depositing thin uniform layer of the metal on a continuously moving web of film; that the boat is rectangular in shape, made of a ceramic material made of titanium diboride and boron nitride which ensures a certain electrical resistance' that the boats are housed in the evaporation source of the chamber within the metalliser;

that each boat can evaporate between 5 to 7 kgs. of Aluminium before it has to be replaced; that the boat is nothing but the inputs and the Appellants are eligible for the benefit of Modvat Credit. He relied upon the decision in the case of Lohia Brass Pvt. Ltd. v. CCE, Meerut , and CCE, Bhopal v. Bharat Zinc Ltd. 3. The learned D.R. Shri P.M. Rao, submitted that the Commissioner (Appeals) has disallowed the Modvat Credit by relying upon the decision in the case of Jalpack Industries Ltd. v. CCE, Meerut and Madhya Pradesh Polypropylene Ltd. 4. I have considered the submissions of both the sides. During the relevant period, Rule 57A of the Central Excise Rules, 1944 provides the Credit of duty paid on inputs. However, Explanation to Rule 57A excludes tools and appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final product from the purview of the inputs. The process of manufacture as explained by the Appellants clearly indicates that the evaporation boat is used as an appliance in the process of manufacture and as such stands excluded from the purview of the definition of the inputs at the material time. This was the view upheld by the Tribunal in the decision relied upon by the Commissioner in the impugned Order. The Larger Bench of the Tribunal has also held in the case of Melton India Ltd. v. CCE, Meerut that the ceramic evaporation boat used in the manufacture of metallised plastic films are appliances and cannot be treated as inputs and thus are not entitled for the benefit of Modvat Credit as the inputs under Rule 57 of the Central Excise Rules. The decisions relied upon by the learned Advocate delivered by the Single Member Bench of the Tribunal.

Thus following the decision of the Larger Bench I reject the appeal.

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