

isibars Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-18-2005

Reported in : (2005)(186)ELT76Tri(Mum.)bai

Judge : K Kumar

Appellant : isibars Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides. The Lower Authorities have denied the credit on programmable logic control system falling under Chapter Heading No.84.71 on the ground that the same is specifically excluded from the purview of capital goods as per the Modvat scheme on capital goods.

Both the Lower Authorities have held that Rule 57Q specifically excluded Heading No. 84.71 from the purview of capital goods as given against Serial No. 2 of the table appended to the Rule. The Lower Authorities have held that since the item in question is a complete system, it is not covered against Serial No. 5 of the aforesaid table being the components, spares and accessories of the goods specified against Serial Nos. 1 to 4 of the said table. That being the position, I do not find any force in the argument of the Id. Counsel that the item in question is covered against the Serial No. 5 because it is a component and part of the machinery. Once Rule 57Q specifically excludes the item in question and if the legislature wanted to include it subsequently against Serial No. 5 it could have

been so provided.

Express exclusion of a particular item cannot be brought under a general category and if the rules intended so to cover them under the subsequent provisions it would be provided in the same manner by way of express provisions. If we agree to the proposition of the Id. Counsel that the item in question is covered against Serial No. 5 of the aforesaid table, then the very purpose of exclusion would be defeated.

2. I, therefore, do not agree with the contention of the Id. Counsel.

The appeal is, accordingly, dismissed.

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