

Ceat Ltd. Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-09-2005

Reported in : (2005)(192)ELT380Tri(Mum.)bai

Judge : A Wadhwa

Appellant : Ceat Ltd.

Respondent : The Commissioner of Central

Judgement :

1. The short issue involved in the present appeal is as to whether the appellants were required to pay duty on used nuts and bolts, when the same were cleared by them as waste and scrap during May, 2000 September 2000.
2. The Assistant Commissioner vide his impugned order confirmed the demand of duty of Rs. 93,019/- in respect of the said goods along with imposition of personal penalty of identical amount. Appeal against the above order did not succeed before the Commissioner (Appeals), who taking note of the provisions of Rule 57S (2)(c), has held that since the appellants had initially taken modvat credit in respect of nuts and bolts, they are liable to pay duty at the time of clearance of the same as waste and scrap in terms of the above provisions.
3. Ld. Representative, appearing for the appellants has assailed the impugned order on the ground that the notice proposed to recovery of duty under the provisions of Section 11A, as if the appellants were the manufacturer of said waste

and scrap. The demand was also confirmed under the said Section by the original adjudicating authority, but on appeal the Commissioner (Appeals) referred to the provisions of Rule 57S(2) and confirmed the demand. This according to Ld representative is beyond the scope of the show cause notice. In addition, it has also been argued the said provisions of Rule 57S(2) were not in effect during the relevant period having been replaced by the new set of Modvat rules. As such, reference to the said Rule, which was not in existence as during the relevant period was not justified.

4. After hearing Shri N.V.B. Nair, Id. DR for the revenue, I find force in the above contention of the appellant. The said Rule 57S(2) being not in existence during the relevant time, recourse could not have been taken to the same. The new set of Rules did not have identical provisions requiring the assessee to pay duty on the capital goods at the time of their clearance from the factory, as waste and scrap. In view of the foregoing, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

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