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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-13-2005

Judge : P Chacko

Appellant : Balaji Elastic

Respondent : Commissioner of Central Excise

Judgement :

1. After examining the records and hearing both sides, I find that the short question arising in this case is whether Modvat credit was admissible to the appellants under Rule 57Q of the Central Excise Rules, 1944 in respect of capital goods prior to its installation in the factory. This issue is squarely covered against the appellants by a decision of this Bench in CCE v. Coimbatore Vijay Cotton & Synthetics 2002 (150) ELT 734 (Tri.Ch) wherein, after examining the provisions of Rule 57Q, it was held that Modvat credit was not admissible to capital goods before its installation in the factory. Ld. Consultant for the appellants has relied on the Tribunal's decision in the case of Lalji Board Industries v. CCE, Kanpur 1999 (82) ECR 775 (Tri)] to argue that, where the essential requirements are fulfilled for taking Modvat credit, the benefit should not be denied on the ground of procedural defects. The decision cited by ld. Consultant is one relating to inputs. It cannot be followed in the instant case for the further reason that one of the essential requirements for taking capital goods credit was not fulfilled by the appellants. It was essential under Rule 57Q that the capital goods should be installed in the factory before availment of Modvat credit thereon. Admittedly, this condition was

not complied with by the appellants. Therefore, as rightly submitted by ld.DR. the Modvat credit in question was rightly denied by the lower authorities. The total amount of credit is about Rs. 99,000/-. The lower authorities have imposed a penalty of Rs. 10,000/- on the party.

I am of the view that, for the irregularity of availing Modvat credit on capital goods before its installation, any such penalty is unjust.

Hence the penalty is vacated. The impugned order will stand modified to this extent only.

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