

Bhilai Cement Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-05-2005

Judge : S Kang, Vice

Appellant : Bhilai Cement

Respondent : Cce

Judgement :

2. The appealing filed this appeal against the order-in-appeal passed by the Commissioner (Appeals) whereby the benefit of Modvat credit in respect of coal tar fuel was denied on the ground that the appellant in their declaration dated 2.9.1994 have not declared coal tar fuel as inputs.

3. The contention of the appellant as that the appellant had filed a declaration dated 2.9.1994 declaring the inputs such as medium hard pitch, soft medium pitch, extra hard pitch and spillage pitch classifiable under Heading No. 2708.11 of Central Excise Tariff. The contention is that coal tar fuel is also classifiable under Heading No.2708.11 as inputs and in the impugned order the benefit of credit in respect of coal tar fuel was allowed after 9.6.1997. The appellant relied upon the Larger Bench decision in the case of Kamakhya Steels (P) Ltd. v. CCE reported in 2000 (40) RLT 575. The contention is that Rule 57G and Rule 57T has been amended by Notification No. 7/99 to the effect that credit shall not be denied on the ground that the declaration filed under Sub-rule (1) to Rule 57G does not contain all the particulars required to be contained therein or the manufacturer fails to comply with any other requirements. The contention is that this amendment is

also applicable to the pending cases.

4. The contention of the Revenue is that no declaration was filed in respect of coal tar fuel and it was subsequently filed with condoning the delay application as per the rules. The delay can be condoned up to six months, therefore, Commissioner (Appeals) has allowed the benefit up to six months.

5. In this case, the benefit of credit was denied only on the ground that fuel description was not mentioned in the declaration. The Rule 57G has been amended by Notification No. 7/99-CE to the effect that credit shall not be denied in the declaration was not contained all the details required to be contained therein and is applicable to the pending cases. The Tribunal in the case of Kamakhya Steels (supra) held that the amendment is applicable to the pending case. IAs the appellant has declared the tariff heading of the inputs and similar inputs were mentioned in the declaration classifiable under the same tariff heading and appellant also filed application for condoning the delay in filing the declaration. In view of the amendments made in the rules, the credit cannot be denied on this ground, the impugned order is set aside and the appeal is allowed.

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