Modi Rubber Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-06-2006

Reported in : (2006)(107)ECC452

Judge : M Ravindran

Appellant : Modi Rubber Ltd.

Respondent : C.C.E.

Judgement :

1. These four appeals are directed against the order-in-appeal dt.

13.11.03 wherein the Commissioner(Appeals) has disposed of four orders-in-original denying Modvat credit on the items.

2. The relevant facts for consideration are that the appellants took Modvat credit on (1) Steel Casting (2) Items used for Hot Pump circulation (3) I.D.Fan (4) Check Valve (5) Paris of generating sets (6) Alarm Annunciation (7) Tyre building drums (8) Switching lever. A SCN was issued to the appellants denying the Modvat credit on these items on the ground that all these items arc not covered under the definition of capital goods. The appellants contested the SCNs and adjudicating authority confirmed the demands in respect of all the above items. The appellate authority has also held that the appellants are not eligible for Modvat credit on the above said items as they are not covered under Rule 57Q i.e. under the definition of capital goods.

Hence this appeal.

3. Ld. Representative appearing for the appellants submits that they had in detail given the uses and placed all the evidence before the adjudicating authority' as well as the appellate authority. He submits that, out of the above two of items i.e. I.D.Fan and Tyre building drums, credit was denied for not filing of declaration. He relied upon the Larger Bench decision of this Tribunal in the case of Jawahar Mills Ltd. v. CCE, Coimbatore CCE, Coimbatore v. Jawahar Mills Ltd. decision of the Tribunal in their own case in Final Order No.1996/05(SM) dt.28.10.05 wherein credit on the parts of weighing machine was allowed to the appellants.

4. Ld. DR on the other hand submits that the eligibility of the credit on the capital goods depends upon the inclusion of the said inputs in the definition of capital goods. He submits that in case of steel castings, the inputs which are procured by the appellants, are not finished. They have to further under go machining and hence cannot be considered as components spare parts. In respect of PTEF/TEFON Strips, he submits that these are parts of moulds but not parts of the machinery and hence credit is correctly disallowed. In respect of Alarm Annunciation, he submits that these are used only on the machines and do not play any role in the manufacture of the final product. In short, in respect of all items, he submits that these cannot be covered under the definition of capital goods, for the simple reasons that they are not tailing as the part of the machinery and that the appellants.

before the lower authorities have not given the details as to where these goods were used. He submits that the explanation given by the representative of the appellants today before the Tribunal should not be considered as they are lack of the authenticity or they arc not giving any concrete evidence regarding how and where these pans are used in the machinery which are fitted in the appellant's factory.

5. Considered the submissions made by both the sides and perused the records. I find from the records that the appellants have not produced any tangible evidence regarding the use of these items in their machinery in their factory. There is no doubt that the appellants were silent before the lower authorities as well as before

me as to where these items are used in the machines as mentioned in the written submissions today. Since these were only in way of assertion before the lower authorities, to my mind that the appellants are required to submit some kind of evidence in the form of chartered Engineers certificate or photographs of these items being used in their machinery.

6. Since the facts of these items being used in the machinery by the appellants in their factory has to be verified, the appeals are allowed by way of remand to the original adjudicating authority with the direction to the appellants to produce whatever possible evidence before the authorities regarding the use of the Capital goods used in their factory. The original adjudicating authority after considering of the material and evidence placed on record and after granting an opportunity of personal hearing to the appellants, will decide the matter afresh. All four appeals are allowed by way of remand.