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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-12-2006

Judge : T Anjaneyulu

Appellant : The Commissioner of Central

Respondent : Shree Chhatrapati Shahu Co-op.

Judgement :

1. The revenue is in appeal aggrieved by the impugned order dated 08/11/2004 passed by the Commissioner (Appeals), Central Excise & Customs, Pune-II. The issue involved is whether the pipes and fittings falling under Chapter 39 used for conveying the spent wash (hazardous waste) is eligible as capital goods or not. The adjudicating authority has denied the modvat credit on the said pipes and fittings.

2. The department alleged in the show cause notice that the pipes and fittings are exclusively used for exempted final products and this fact was not disclosed, as such, Section 11A(1) of the Central Excise Act 1944 was also invoked. The adjudicating authority held that pipes and fittings are not used within the factory premises and are used outside the factory premises. The pipe and fittings are used for conveying the spent wash from their distilleries to compost yard. It is the case of the respondents that the pipes and fittings are partly laid within the factory premises and partly outside the premises. The Commissioner (Appeals) has observed that the disposal of spent wash is the basic condition of the manufacturer, who intend to run a distillery, the spent wash contains hazardous

elements. No distillery is being permitted to start activity unless it is having the proper pollution control system inclusive of disposal of spent wash. Therefore, the pipeline is part and parcel of the pollution control system. In this regard, he has placed reliance on the Indian Farmers Fertilizers Co.-Op. Ltd. v. CCE and 3. I have examined the facts of the case. It is found that the spent wash is a bye-product but cannot be called as a final product. The final product of the respondent's unit is sugar, molasis and denatured spirits and rectified spirits. The spent wash is emerged as waste product, which necessarily to be safe guarded as against the possible pollution. Therefore, required devices are to be installed as an anti-pollution system in sending out the waste material or other effluents of the similar nature. Though the pipes and fittings may not be called as main equipment or device of the pollution control system, but this is supporting system of the unit, which ultimately passes out the waste product. It is settled position of the law that the pollution control system installed in an industry is being treated as capital goods and Cenvat credit is permissible. Therefore, the pipelines and fittings, which is part and parcel of the pollution control system also be treated as capital goods, which are eligible for Cenvat credit. The pipeline fitted within the factory and outside the factory cannot be segregated but to be treated as one entity as it situate within the factory premises itself. Otherwise, there is quite possibility of gathering all the waste material at the end of the factory itself, which cannot solve the pollution problem. All such hazardous effluents to be taken out at a distance to safe guard the health and welfare of the workers of such an industry and the public at large within the vicinity of the factory. Therefore, I find nothing illegality in the impugned order passed by the Commissioner (Appeals) in treating the disputed items as capital goods and allow Cenvat credit on them Accordingly, the revenue's appeal is dismissed.

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