SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Lloyds Metal and Engineers Ltd. Vs. Ccex

Lloyds Metal and Engineers Ltd. Vs. Ccex

SooperKanoon Citation : sooperkanoon.com/43421

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-18-2006

Judge : S T Chittaranjan

Appellant : Lloyds Metal and Engineers Ltd.

Respondent : Ccex

Judgement :

1. Heard both sides at length. The issue in these two appeals is whether welding electrodes used for repairing and maintenance of machinery items and parts can be allowed Cenvat credit as inputs. In an earlier Single Bench decision in the appellants' own case reported at , such welding electrodes were allowed duty credit as capital goods. However, in these cases, the appellants are seeking duty credit on welding electrodes as inputs. In the Larger Bench's decision in the case of Jaypee Rewa Plant v. CCE , it has been held that welding electrodes used for maintenance and repairing cannot be considered as inputs. In the case of Union Carbide India Ltd. v.CCE, Calcutta-I 1996 (86) 613, the Larger Bench has allowed input duty credit on copper wire used in welding process in the manufacture of metal containers. In the case of Vikram Cement v. CCE, Indore , duty credit on explosives, lubricating oils etc. as well as on welding electrodes used outside the factory and in the mines were allowed as inputs.

2. It is the submission of the learned DR that the decision in the cases of Union Carbide (cited supra) and Vikram Cement (cited supra), deal with cases of copper wire and welting electrodes used in the manufacturing process, whereas in the

present case, the use of the welding electrodes is for repairing and maintenance of machinery, which has been dealt in the decision of the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant (cited supra). The learned DR also cites a numbers of decisions listed below, where duty credits on welding electrodes and similar goods have been denied:CCE, Triuneveli v. Sri Gomathy Mills Pvt. Ltd. 2006 (194) ELT 413 (Tri-Chennai)Simbhaoli Sugar Mills Ltd. v. CCE, Meerut 2001 (138) ELT 1063 (Tri-Del)Rosa Sugar Works v. CCE, Kanpur 3 The learned Advocate cites the recent decision of the Bangalore Bench of the Tribunal in the case of India Sugars and Refineries Ltd. v. CCE, Bangalore 2006-TIOL-540-CESTAT-BANG, which allows credit on welding electrodes used in the repairing of pipes carrying hot sugar juice. I find that this decision has allowed credit on welding electrodes even though the same was used for repairing and maintenance.

4. After considering all the decisions cited above, I am of the view that the decisions such as Union Carbide (supra) and Vikram Cement (supra), have dealt with cases, where welding electrodes were used in the process of manufacturing such as making finished goods like metal containers, but these cases do not deal with a case similar to that of the appellants. On the other hand, the learned DR cites the decision of the Larger Bench in the case of Jaypee Rewa Plant (supra), which directly deals with a case similar to the present case, where welding electrodes are used in repairing and maintenance of machinery and therefore the same is to be preferred to the Division Bench decision in the case of India Sugar (supra). Hence, following the Larger Bench's decision in the case of Jaypee Rewa Plant (cited supra), I hold that the claim of the appellants for availing input duty credit in respect of welding electrodes used in repairing and maintenance is not admissible.

5. Considering the submissions of the learned Counsel in regard to penalty, I find that the penalty of Rs. 21,000/- has been imposed against a total duty demand of Rs. 81,795/-. Keeping in view the totality of the facts and circumstances including the legal issue involved in the case, I set aside the penalty imposed upon the appellants.

6. The appeals are dismissed except for setting aside the penalty amount.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com