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**The Commissioner of Central Excise Vs. Maris Spinners Limited and Customs, Excise and Service Tax Appellate Tribunal**

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**SooperKanoon Citation** : sooperkanoon.com/834784

**Court** : Chennai

**Decided On :** Nov-01-2007

**Reported in** : 2008(223)ELT163(Mad)

**Judge** : K. Raviraja Pandian and ;Chitra Venkataraman, JJ.

**Acts** : Central Excise Tariff Act, 1985; Central Excise Rules, 1944 - Rule 57Q, 57T and 57DQ

**Appeal No.** : C.M.A. No. 2993 of 2004 and C.M.P. No. 16761 of 2004

**Appellant** : The Commissioner of Central Excise

**Respondent** : Maris Spinners Limited and Customs, Excise and Service Tax Appellate Tribunal

**Advocate for Def.** : B. Raviraja, Adv. for R.1

**Advocate for Pet/Ap.** : P. Bhuwaneswaran, CGSC

**Judgement** :

**K. Raviraja Pandian, J.**

1. This Appeal is filed against the Final Order No. 464 of 2004 dated 30.04.2004 made by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2. The question of law formulated for entertainment of the appeal are as follows:

1. Whether the Tribunal is correct in holding that the light fittings which were not covered under the definition of capital goods given under Rule 57Q of erstwhile Central Excise Rules, 1944, and not sued for producing or process of ultimate manufacture of any Final products, are eligible capital goods for availing Modvat credit under Rule 57Q of erstwhile Central Excise Rules, 1944?

2. Whether the Tribunal is correct in not construing the fiscal language in Rule 57Q of erstwhile Central Excise Rules, 1944 strictly?

3. The first respondent herein is engaged in the manufacture of cotton yarn falling under heading No.52.05 of the Central Excise Tariff Act 1985. They availed Modvat credit on the goods 'lighting fittings and parts thereof' falling under heading No. 94.05 to the extent of Rs. 47,994/- under Rule 57Q of the Central Excise Rules, 1944. They have filed necessary declaration under Rule 57T on 23.2.2996. The capital goods credit was sought to be disallowed on the ground that the goods were ineligible capital goods under Rule 57Q. The original authority allowed the credit holding inter alia that the goods were industrial in nature and hence eligible for credit. Aggrieved by the said order, the Revenue moved the commissioner (Appeals), who by his order dated 29.7.2003 held in favour of the revenue. Aggrieved by the said order, the assessee filed appeal before the Customs, Excise and Service Tax Appellate Tribunal. The Tribunal by following the decisions of the Supreme Court in the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. reported in 1997 (91) ELT 34 and also The Commissioner Of Central Excise, Coimbatore v. Jawahar Mills Limited reported in : 2001(132)ELT3(SC) has held in favour of the assessee by allowing the appeal. The correctness of the said order is now put in issue before this Court.

4. As stated in the summation of facts, the respondent herein has availed the Modvat credit in respect of lighting fittings. Whether the availment of credit in

respect of lighting fittings under Rule 57DQ of the Central Excise Rules is correct or not is the only question involved. The Supreme Court in the case of The Commissioner Of Central Excise, Coimbatore v. Jawahar Mills Limited reported in : 2001(132)ELT3(SC) has held that having regard to the normal conditions prevailing in the industry, production of the finished goods would be difficult without the use of electrical equipment and the equipment should be regarded as intended for use in the manufacture of the goods. In the case of Jawahar Mills referred above, the Supreme Court has held that the power cables and capacitors, control panels, cables distribution boards, switches and starters and air compressors, electrical wires and cables would qualify for the benefit as capital goods under Rule 57Q.

5. When the Supreme Court has enunciated the law as aforesaid by bringing the 'lighting fittings and cables' within the ambit of capital goods under Rule 57Q, we are of the view that the order of the Tribunal allowing the case in favour of the first respondent/assessee cannot be considered as illegal or irregular so as to interfere in this appeal and accordingly the questions of law raised are answered against the revenue and the appeal is dismissed. Consequently, the connected C.M.P. is also dismissed.

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