

Collector of Central Excise Vs. Shiv Industries

Collector of Central Excise Vs. Shiv Industries

SooperKanoon Citation : sooperkanoon.com/9486

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-10-1996

Reported in : (1997)(93)ELT174TriDel

Appellant : Collector of Central Excise

Respondent : Shiv Industries

Advocate for Def. : Ms. Ginny Bedi

Judgement :

1. Shri Haja Muhideen, learned JDR at the outset submitted that the Hon'ble Tribunal dismissed their appeal under Final Order No.1007/95-NB on the ground that no one was present when the matter was called.
2. The learned JDR submitted that on 2-11-1995 when the above appeal was fixed for hearing the notice for hearing was received on 2-11-1995; that it was not possible to muster additional strength by with drawing departmental representative from other Benches that there was no adequate strength of departmental representatives on that date he therefore prayed that the appeal may be restored.
3. Ms. Ginny Bedi, learned Counsel does not object. Heard considered. I find that there is force in what the learned JDR submitted that strength of departmental representatives is very limited and whenever benches are created only a short notice is given. Therefore it is not possible to rearrange the work and also to effectively represent the department. In the circumstances I find that there was

sufficient cause for absence of the departmental representative. I therefore recall the Final Order No. 1007/95-NB and restore the appeal to its original number. ROA is disposed of in the above terms.

4. On enquiring from both the sides I found that it was a short issue involved in this appeal. With the consent of both sides it was decided to proceed with the appeal itself.

5. By the present appeal the appellant argued that the Modvat credit will not be admissible on Oxygen gas and calcium carbide as neither Oxygen gas can be treated as an input nor Calcium carbide can be considered as an input in the manufacture of tractor parts.

6. The facts of the case in brief are that the respondents are engaged in the manufacture of tractor parts. They used Calcium Carbide and Sulphuric Acid in the manufacture of Acetylene gas. They also used Oxygen gas. The respondents herein contended that since these items are used in or in relation to manufacture of the tractor parts therefore Modvat credit under Rule 57A should be allowed to them. The department alleged that Oxygen gas is used as tool in the manufacture of tractor parts and therefore Oxygen gas cannot be treated as an input as tool is excluded. The second argument was that calcium carbide and sulphuric acid are used in the manufacture of acetylene gas which is used again in or in relation to the manufacture of tractor parts and therefore the respondents herein claimed that Modvat credit under Rule 57A should be allowed to them.

7. Haja Muhideen, learned JDR for the appellant submitted that Oxygen gas in the instant case is used for cutting and therefore it was in the nature of tool and since the tools are excluded from the scheme of Modvat credit under Rule 57A, he submitted that no Modvat credit will be admissible on Oxygen gas. In regard to Calcium carbide the learned JDR submitted that Calcium carbide is not input as it is not directly used in or in relation to manufacture of tractor parts and therefore the Collector (Appeals) had wrongly allowed Modvat credit on calcium carbide.

8. Ms. Ginny Bedi, learned Counsel for the respondents submits that Oxygen gas is definitely used in or in relation to the manufacture of tractor parts. She submits

that Oxygen gas is not a tool nor it is classifiable as a tool in the Central Excise Tariff. She submits that the arguments of the learned JDR that Oxygen gas is a tool is not supported by the fact that Oxygen is a gas and simply because it is used for cutting purpose it cannot be termed as tool. On Calcium Carbide the learned Counsel submits that Calcium Carbide is used in the manufacture of Acetylene gas and that since Acetylene gas is used for welding purposes and therefore Calcium Carbide should be considered as an input. In support of her contentions she submitted that Oxygen gas is an input and not cutting tool. She cited and relied upon of this Tribunal's judgment in the case of Hindustan Development Corporation reported in 1990 (47) E.L.T. 376 (Tribunal). The learned Counsel submits that both the items namely Oxygen gas and Calcium Carbide are inputs and therefore Modvat credit should be allowed on them.

9. Heard the submissions of both sides. I find that the department has argued that Oxygen gas is a tool. Now it becomes tool, it has been argued by the department that it is used for cutting purpose. Simply because a product is used for cutting purpose it may not become a tool.

The fact is that Oxygen is a gas, is used for cutting and welding purpose. Thus it becomes an input inasmuch as it is used in or in relation to manufacture of the tractor parts. Having regard to the fact that Oxygen is not tool and is used in or in relation to the manufacture of the tractor parts I agree with the findings of the Collector (Appeals) and I do not see any infirmity in his order in so far as Oxygen gas is concerned.

10. On the question whether Calcium Carbide is an input I find that Calcium Carbide is not directly used in the manufacture of tractor parts. It was argued before me that Calcium Carbide and Sulphuric Acid are used in the manufacture of Acetylene gas and Acetylene is further used in the manufacture of tractor parts. How Calcium Carbide is used in or in relation to manufacture of tractor parts is not clarified is Rule 57A permits taking Modvat credit on inputs, the inputs are those inputs which are used in or in relation to the manufacture of the final product in the instant case the final product is tractor parts. The inputs can be Acetylene or Oxygen however the respondents claimed Modvat credit on Calcium Carbide

which is not inputs used in or in relation to the manufacture of the tractor parts and therefore no Modvat credit will be admissible on Calcium Carbide. In this view of the matter part of the impugned order of the Collector (Appeals) is modified.

11. The impugned order is modified to the extent stated above and the appeal is disposed of accordingly.

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