Jindal Strips Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-11-1996

Reported in : (1996)(86)ELT497TriDel

Appellant : Jindal Strips Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is an application for dispensing with the pre-deposit of demand of duty of Rs. 10,37,606/- which has been held by the Commissioner of Central Excise and Customs, Raipur in the order dated 27-2-1996 to be ineligible Modvat credit on capital goods under Rule 57Q. The goods involved are refractories used in kilns or furnaces. The learned counsel for the applicants Shri V. Sridharan submitted that the Commissioner has held that refractories have been included within the definition of capital goods under Rule 57Q only after 16-3-1995 and that the demand in this case relates to a period earlier to that.

However the learned counsel submitted that the Tribunal in its decision in the case of CCE v. Raipur Alloy Steels 1995 (78) E.L.T. 44 (Tribunal) had held that refractories bricks used for lining in the furnaces for manufacturing steel are in the nature of equipment or parts covered by the excluded category for Modvat credit under Rule 57A and because of this finding of the Tribunal the learned Counsel urged that the Commissioner ought to have granted the facility of Modvat credit under Rule 57Q to these refractories. Shri Mewa Singh the learned SDR opposed the stay and pointed out that the refractories became specifically eligible for

Modvat credit under Rule 57Q only from 16-3-1995 and the period in question involved in this appeal is prior to that. On careful consideration of the submissions made by both sides we find that the applicants in their reply to the show cause notice had specifically cited the Tribunal's decision in Raipur Alloy Steels and because of this decision if the material is excluded from Rule 57A it should logically fall under 57Q and its explanation. We find that the Commissioner in his order has not at all adverted to this plea of the applicants. This was very necessary for resolving the issue because the provisions of Rule 57Q cover exactly the area which is excluded under Rule 57A denying inputs under that Rule. Since the necessary and relevant findings on a specific plea taken by the applicant has not been given in the impugned order by the Commissioner (Appeals), are of the view that the applicants have made out a prima facie case for dispensing with the pre-deposit and we order accordingly. The recovery of the amount is stayed till disposal of the appeal.