(2010) 03 P&H CK 0340

In the Punjab And Haryana At Chandigarh

Commissioner of C. Ex. APPELLANT

Vs

Escorts Limited RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Citation : (2010) 254 ELT 38

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Judgement

Ashutosh Mohunta, J.—The Customs, Excise and Gold (Control) Appellate Tribunal has referred the following question of law for adjudication by this Court:

1. Whether heating elements, emery belt, fire clay, graphite powder, aluminium powder, grinding wheel, plastic tape and mold cote declared as inputs under Rule 57A could qualify the benefit of modvat credit even when these are neither inputs nor are used in relation to manufacture of final products?

2. Whether the items referred above which are covered in the excluded category of items in terms of explanation to Rule 57A are admissible for the benefit of modvat?

2. The provisions of Rule 57-A granting incentive to the manufacturer was inserted in order to expand the business premises in India. The combined reading of this provision would reveal that the manufacturer is entitled to claim the modvat credit on such finished excisable goods as the Central Govt, may notify and the credit of specified duty under this section shall be allowed on the inputs used in the manufacture of final products as well as on inputs used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final product or not. According to section 57B, the manufacturer of final products shall be allowed to take credit of the specified duty paid on the inputs used in or in relation to the manufacture of final products, whether directly or indirectly and whether contained in the final products or not, namely, (i) the inputs, which are manufactured and used within

the factory of production, but according to Section 57B(2), the manufacturer of the final products shall not be allowed to take credit of the duty paid on machines, machinery, equipment, apparatus, tools, appliances or capital goods.

3. It means, the assessee is entitled to avail the modvat credit on the inputs/ material used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final product or not.

4. In Collector of Central Excise, Bangalore Vs. Escorts Mahle Ltd., , the Hon''ble Supreme Court has held that the material used in the manufacture of final products would be eligible modvat credit being an input.

5. In this case, the material being used for manufacture of inputs in respect of explosives is termed as machinery. In fact, in Escorts Mahle Ltd''s case (supra), even parts of machinery would be eligible for modvat credit. Similar view was taken by the Apex Court in case of M/s. Jaypee Rewa Cement Vs. Commissioner of Central Excise, M.P., , wherein it was held that the inputs used in the manufacture of intermediate products that is lime stone, which subsequently used in the manufacture of cement was entitled to Modvat credit.

6. In view of the above, we hold that the manufacturer would be entitled to claim Modvat credit. Resultantly, the questions posed are answered in favour of the assessee and against the revenue.