(2010) 03 P&H CK 0350

In the Punjab And Haryana At Chandigarh

Commissioner of C. Ex. APPELLANT

Vs

Steel Strips Alloys RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Citation : (2010) 254 ELT 410

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

Bench : Division Bench

Judgement

Ashutosh Mohunta, J.—The Customs, Excise & Gold (Control), Appellate Tribunal, vide its order dated 6-9-2000 has referred the following substantial question of law for adjudication by this Court:

Machine, machinery, plant, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of final products are in eligible for Modvat Credit under exclusion clause of Explanation to Rule 57A. Foundary Flux, IR, Mix, Refractoris, Mortar etc. are used as part of the furnace. Therefore, will not the Foundary Flux, IRL, Mix, Refractories and Mortar be covered in the excluded category of items of Explanation to Rule 57A?

2. The provisions of Rule 57-A granting incentive to the manufacturer was inserted in order to expend 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 fact, in Escorts Mahle Ltd.''s case (supra), even parts of machinery would be eligible for modvat credit. Similar view was taken by a Division Bench of this Court in case Commissioner of C. Ex. Vs. Bhushan Alloys and Steels Ltd., wherein the question was whether Modvat credit in respect of mortar, castable powder, refractory, ramming mass, foundry flux and chemicals is available under Rule 57A of the Central Excise Rules, 1944. It was held that for this credit, the manufacturer can avail the modvat crdit.

6. In view of the above, we hold that the foundary flux, IR, Mix, refractories, mortar etc., which are used in layer in furnace have to be considered for manufacture of final products and thus the manufacturer would be entitled to claim Modvat credit. Resultantly, the question posed is answered in favour of the assessee and against the revenue.