

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/441 /2006-SM[BR]

Date 24/01/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S V.V.S ALLOYS LTD.
IND AREA, MALWAN, FATEHPUR

M/S V.V.S ALLOYS LTD.

CCE, LUCKNOW

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 149/2008-SM[BR] dated 3.12.2007 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CCE, LUCKNOW
ASHOK MARG, LUCKNOW (UP)
2. Adv. / Consult SHRI. ATUL GUPTA CO. SECY.
B-1/1289-A, VASANT KUNJ NEW DELHI-70
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
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Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal No. 441 of 2006 –SM (BR)

[Arising out of order in Appeal No. 148 & 149-CE/2005 dated 21.03.2005 passed
by the Commissioner of Customs & Central Excise (Appeals), Lucknow]

Date of Hearing/ Decision: 03.12.2007

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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- | | | |
|--|---|--------------------|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. | : | |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | (Handwritten mark) |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | |
-

M/s V.V.S. Alloys Limited

Appellant

[Rep. by Mr. Atul Gupta, Co. Secy. for the appellant]

Vs.

CCE, Lucknow

Respondent

[Rep. by Mr. A.K. Rastogi, Authorised Representative (DR) for the respondent]

CORAM: Mr. P.K. Das, Member (Judicial)

Final **ORDER** No 149 /08-SM(BR)

Per P.K. Das:

The appellant filed this appeal against denial of modvat credit on transformer of 33 KVA and accessories. Both the authorities below held that transformer of 33 KVA and accessories are not covered within the definition of capital goods in terms of clause (d) of Explanation (1) of sub-rule (1) of Rule 57Q of the erstwhile Central Excise Rules, 1944 as it stood during the relevant period.

2. Learned Counsel on behalf of the appellant submits that the Tribunal in the case of CCE, Indore vs. L.G. Hotline CPT Limited reported in 2004 (176) ELT 443 (Tri. Del.) held that transformer of power handling capacity less than 75 KVA is capital goods within the definition given in explanation to Rule 57Q of erstwhile Central Excise Rules, 1944

3. Learned DR on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He submits that the transformer was not used for the manufacture of final product. He submits that in this case transformer and accessories are additional parts of the transformer used to protect the transformer from over current and earth problem. Thus, the case law relied upon by the learned Counsel is not applicable herein.

4. After hearing both the sides and on perusal of the records, I find that clause (d) of sub-rule (1) of Rule 57Q of the Rules provides electric generating sets, of output exceeding 75 KVA falling under heading No. 85.02 used in the factory of the manufacturer are to be treated as capital goods. The Tribunal in the case of L.G. Hotline CPT Limited (supra) held that transformer of power handling capacity less than 75KVA is capital goods within the definition of explanation to Rule 57Q of the Rules. He also relied upon the decision of the Tribunal in the case of Monnet Ispat Ltd. vs. CCE, Raipur reported in 2003 (159) ELT 472 (Tri-Del). The relevant portion in the case of L.G. Hotline CPVt Ltd. (supra) is reproduced below:-

“3.2 Finally he submitted that transformer below 75 KVA is eligible for modvat credit as it is used for producing or processing the goods in the factory; that the mere fact that clause (d) of Explanation to Rule 57Q refers to transformers of capacity exceeding 75 KVA does not mean that the goods covered by clause (a) of Explanation are excluded from the definition of capital goods.

4. We have considered the submissions of both the sides. We agree with the learned Advocate for the Respondents that transformer of power handling capacity less than 75 KVA is capital goods within the definition of capital goods as given in Explanation to Rule 57Q. It is not the case of the Revenue that the impugned transformer is not used in the producing or processing of the goods manufactured by the Respondents. In view of the judgement of the Supreme Court in the case of CCE vs. Jawahar Mills, 2001 (132)

ELT 3 (SC) the capital goods credit is available to the impugned transformer. Accordingly we reject the Revenue's appeal as far as eligibility of transformer less than 75 KVA to capital goods is concerned".

5. Both the authorities below denied credit on transformer and accessories on the ground that it is less than 75 KVA. But the Tribunal held that even it is less than 75 KVA is capital goods covered within clause (a) of Explanation to Rule 57Q of the erstwhile Central Excise Rules, 1944.

6. The contention of the learned DR is that in the present case transformer was not used in the producing or processing of the finished goods. In this context, I find that there is a specific averment in the adjudication order that the transformer were installed in their factory. There is no allegation in the show cause notice that the goods in question were not used in the factory of the manufacturer. Therefore, I do not find any substance on the submission of the learned DR. Accordingly, the impugned order is set-aside and the impugned order is allowed with consequential relief.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]