

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH-NB(SM)

Appeal No. E/217, 224, 224/98  
and E/146/00/NB(SM)

Dated : 1/3/2001

CEGAT  
NEW DELHI

To, 1. M/s Flex Industries Ltd  
29-B, Industrial Area  
Malanpur, Distt. Bhand (MP)

2. M/s Flex Industries Limited  
A-1, Sector 60  
NOIDA - 201301

In the matter of :

Flex Industries

Appellant

vs.

CCE Indore

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/310-313/01/NB(SM)  
Dated : 20/2/2001.....passed by the Tribunal under Section 35-C(1) of Central Excise  
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

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Asstt. Registrar  
NB(SM)

1. CCE Indore
2. CCE / CC / (Appeal) Bhopal
3. Chief Commissioner of Central Excise / Customs. Indore
4. Adv. / Consult.
5. S.D.R-NB(SM)
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
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IN THE CUSTOM EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL  
NEW DELHI

APPEAL NO. E/217,224,226/98 and E/146/00 NB(SM)

(Arising out of Order-In-Appeal No. 145 to  
147/CE/BPL/97 dt. 3-11-97 and 111-CE/BPL/2000 dt. 20-  
10-2000 passed by the Commissioner (Appeals) Central  
Excise, Bhopal)

FLEX INDUSTRIES LTD.

APPELLANTS

Represented by Shri Kailash Chander,  
Chartered Accountant

Vs.

CCE INDORE

RESPONDENTS

Represented by Shri M.D.Singh, SDR

CORAM: SH. V.K.AGRAWAL, MEMBER (TECHNICAL)

FINAL

ORDER NO

DATE

A/310-313/01/NB  
CE/m

PER;V.K.AGRAWAL:

In these four appeals, filed by M/s  
Flex Industries Ltd, the issue involved is  
whether the Modvat Credit under Rule 57A  
is available in respect of evaporation  
boats and alternatively capital goods  
credit is available under Rule 57Q of the  
Central Excise Rules.

2. Shri Kailash Chander, Ld. Chartered  
Accountant, conceded at the outset that

modvat credit under Rule 57A is not available in respect of evaporation boat in view of the decision of the Larger Bench of the Tribunal in the case of Melton India Ltd. Vs. CCE Meerut, 2000(121) ELT 701(T-LB.) He further, submitted that in reply dt. 16-1-97 to the show cause notice dt. 19-12-66, the Appellants had put an alternative plea that capital goods credit would be available to them as the evaporation boats were appliances or apparatus as mentioned in Explanation 1(a) to Rule 57Q; that they had requested for allowing the capital goods credit ignoring the minor procedural irregularities. He finally submitted that the Larger Bench of the Tribunal in the case of CCE Meerut Vs. Modi Rubber Ltd., 2000(38)RLT 718, has held that credit cannot be denied under Rule 57A only on the ground that declaration was filed in terms of Rule 57Q.

3. Countering the arguments Shri M.D.Singh, Ld. SDR, submitted that the appellants have not claimed the capital goods credit under Rule 57Q in the Memorandum of Appeal filed by them in the Tribunal; that no prayer has been made by them for allowing the credit under Rule

57Q at all and as such there is no claim for the credit under Rule 57Q; that as the Larger Bench of the Tribunal in the case of Melton India has dis-allowed the modvat credit under Rule 57A in respect of ceramic boat used in the manufacture of metalized Polyester films, their appeals deserve to be rejected. In reply the ld. Chartered Accountant mentioned that in their Memorandum of Appeal, in Appeal No. E/217/98-NB, they have clearly mentioned that the credit under Rule 57Q would be admissible and the same ought to be allowed to them by ignoring the minor procedural irregularities; that in Appeal No. E/146/2000-NB they have clearly made averment in grounds of Appeal for eligibility to credit under Rule 57Q. Finally he relied upon the decision in the case of CCE Jaipur Vs. G.K.Synthetics 1999(107) ELT 761 wherein it was held that Aircurtain was used in or in relation to manufacture of polyester fibre and it is immaterial whether the credit is allowed under Rule 57Q or under 57A.

4. I have considered the submissions of both the sides. It has been held by the Larger Bench of the Tribunal in the case of Melton India Ltd. that the ceramic

Evaporation Boats are appliances and cannot be treated as inputs used in or in relation to the manufacture of final product. Accordingly, Modvat Credit under Rule 57A of the Central Excise Rules is not available in respect of impugned goods. However, the Appellants even at the stage of reply to the show cause notice had claimed capital goods credit under Rule 57Q which has not been considered by the Adjudicating Authority. The Appellants have also shown that they had mentioned about their claim for capital goods credit under Rule 57Q in Appeal Memorandum and also in one appeal in the grounds of appeal also. As the claim had been made by the Appellants even before the Adjudicating Authority, they cannot be restrained from raising the same before the Tribunal. Accordingly, all the matters are required to be remanded to the Adjudicating Authority to consider the eligibility of evaporation boats for capital goods credit under Rule 57Q of the Central Excise Rules. The fact that the Appellants had not filed the declaration under Rule 57Q cannot be taken as an objection for not granting the capital goods credit as the declaration had been filed under Rule 57A and in the light of the Larger Bench decision in Modi Rubbers case, supra. Accordingly I remand

-5-

all the four appeals to the Adjudicating Authority to decide afresh whether the Appellants are eligible to avail of capital goods credit in respect of evaporation boats. The appeals are allowed by way of remand.

(V.K.AGRAWAL)

MEMBER (TECHNICAL)

sunita

20-2-2001