

GIB/DL/BOC India/24-05-2007/HC-142

High Court Category : Credit Reversal

State : Delhi

Order No.: GIB/DL/BOC India/24-05-2007/HC-142

Name of Entry :
CCE v BOC India Ltd.

Date : 24-05-2007

Breif Issue :

Facts & Issue of Case:

The Assessee uses Nitrogen and liquid argon as inputs in its manufacturing process. It appears that because of the nature of the gas, some of it evaporates in the atmosphere. A show-cause notice was issued to the Assessee as to why MODVAT credit should not be disallowed in respect of the gas which gets in the atmosphere. The Assessee gave its reply and the Assistant Commissioner adjudicated against the Assessee by an order dated 31st May, 1999.

Feeling aggrieved, the Assessee preferred an appeal before the Commissioner (Appeals) to set aside the order of the Assistant Commissioner on the ground that the nitrogen/liquid argon which has evaporated cannot be said to have been used in the manufacture of the goods.

It was held that the evaporation does not amount to waste and, therefore, disallowance under Rule 57D of the Central Excise Rules, 1944 was incorrect.

Decision of Advance Ruling Authority :

Decision:

The High Court held that the loss of nitrogen / liquid argon due to evaporation cannot be considered as waste or refuse or even a by-product arising during the manufacture of the final product. Evaporation is a natural consequence of the manufacturing activity carried out by the assessee, hence credit cannot be denied.