



Central Board of Indirect Taxes & Customs

Department of Revenue, Ministry of Finance, Government of India



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Circular No. 490/56/99-CX
dated 25/10/1999

F.No.356/18/99-TRU

Government of India
Ministry of Finance
Department of Revenue,
Tax Research Unit

Subject : Restriction of Modvat credit on goods imported under Project Imports (classified under Heading 98.01 of the Customs Tariff Act reg.)

I am directed to say that representations have been received by the Board that in some Commissionerates, the credit of Additional Duty of Customs paid on the goods (other than Capital Goods) classified under Heading 98.01 of the Customs Tariff imported under Project Import Regulations, 1986 has been restricted to 75% on the ground that Rule 57Q(3) restricts the admissible credit in such cases to the extent of 75% only. They have requested that the credit in respect of raw material, inputs and components which are not the nature of capital goods should be permitted to the extent of 100%.

2. The matter has been examined. Heading 9801 covers all items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control) as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial settings up of a unit, or the substantial expansion of an existing unit. Imports under heading no. 9801 are allowed not only to the person who is setting up the project, but also to sub-contractors who have been engaged to provide machinery, equipment etc. for such projects. Such sub-contractors are allowed to import raw materials, components, materials etc. required by them for the manufacture of the machinery, etc. at the same rates as are applicable to the project under heading no. 9801. It is evident, therefore, that imports under heading 9801 are not only of the capital goods but also of raw materials and inputs required for the manufacture of capital goods. thus, heading no. 98.01 also covers items which are really in the nature of "inputs" as defined under rule 57A, in addition to capital goods.

3. Modvat credit in respect of raw materials and inputs is covered by the provisions of Rule 57A read with Rule 57B of the Central Excise Rules, 1944, while Modvat credit in respect of capital goods is covered under Rule 57Q of the Central Excise Rules, 1944. As per sub-rule (2) of Rule 57B, machines, machinery, equipment, apparatus, tools, appliances or capital goods as defined in Rule 57Q are excluded from the scope of the input Modvat credit. That is to say, capital goods covered under Rule 57Q are not eligible for input credit under Rule 57A or 57B. Hence, the provisions of Section AAAA of Chapter V of the Central Excise Rules, 1944 governing the Modvat on capital goods would not apply in respect of the Modvat on inputs, and vice versa. Thus, the restriction of 75% in respect of credit of additional duty paid on goods imported under Project Imports, classified under heading 98.01 of the Schedule to the Customs Tariff Act, 1995, would apply only in respect of capital goods and not to raw materials, inputs and components. In respect of the later 100% of the credit of the duty paid is permissible, if they are otherwise covered under Rule 57A read with Rule 57B. This is logical because whereas for such raw material, etc. the user cannot claim any depreciation, he can claim depreciation for the balance of the 25% of the duty paid on capital goods. Thus, in totality, the cumulative benefit for capital goods and inputs, raw materials, components, etc. imported under heading no. 9801 would be the same.

4. In view of the above, it is clarified that the restriction under Rule 57Q(3) would apply only in respect of Capital Goods imported under heading no. 98.01 of the Schedule to the Customs Tariff Act, 1995 and not to raw materials, inputs and components for the manufacture of Capital Goods imported under heading no. 98.01.

5. Trade and Field formations may be informed accordingly.

6. The receipt of this Circular may be acknowledged.

Sd/-
(Sanjeev Sachdeva)
Deputy Secretary (TRU)

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