

Commissioner of Central Excise Vs. R.K. Marbles Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-1996

Reported in : (1997)(92)ELT276TriDel

Appellant : Commissioner of Central Excise

Respondent : R.K. Marbles Ltd.

Judgement :

1. The captioned two appeals are being disposed of by this common order inasmuch as the issue involved for determination in both the appeals is the same. The issue is whether gantry crane, transformers and trolley are capital goods and are eligible for inputs duty credit under the Modvat scheme. The Department alleged that these items are used for moving the raw materials from one place to the other and do not participate in the process of manufacture and therefore since items did not participate in the process of manufacture therefore they were not eligible to Modvat credit. However Commissioner (Appeals) held that gantry crane and transformers in the case of R.K. Marbles Ltd. are capital goods and were eligible for the benefit of Modvat credit and in the case of Patwari Marbles Pvt. Ltd. the items are gantry crane, trolley and transformers. In this case also the Commissioner (Appeals) allowed a relief by holding that gantry crane and transformers were capital goods for the purpose of Rule 57Q and were eligible to Modvat credit. Against this order the Department has filed the present appeals.

2. Shri Y.R. Kilaniya, Id. JDR for the appellant submits that gantry crane and trolley are required for moving the inputs from one place to the other and therefore they

were not capital goods; and that gantry cranes are not used for producing or processing of any goods or bringing about any change in any substance for the manufacture of final product; that transformers merely change electric voltage and vice-versa therefore was not and cannot be said to be used in producing or processing of any goods or bringing about any change in any substance in the inputs. He, therefore submits that these inputs were not entitled to the benefit of Modvat credit in terms of Rule 57Q. He submits that the Assistant Commissioner has rightly denied the benefit and that the Commissioner (Appeals) was wrong in holding that 3 items were eligible to the benefits under Rule 57Q.3. Shri K.K. Anand, Id. Counsel appearing for the respondents submits that in so far as the crane is concerned the issue is entirely covered by the decision of this Tribunal in the case of Man Structural Ltd. in its Final Order No. A/1984/96-NB, dated 1-8-1996 in which the Tribunal held that the appellants were eligible to get benefit of Rule 57Q in respect of Mobile crane used by them in their factory for handling raw materials, semi-finished goods etc.

4. The Id. Counsel submits that trolley used by the respondents should similarly get the benefit of Rule 57Q in as much as trolley is used by the respondents in their factory for handling raw materials, semi-finished goods etc. In support of his contentions the Id. Counsel cited and relied upon the judgment of the Apex Court in the case of Rajasthan Chemical Works -1991 (55) E.L.T. 444. The Id. Counsel also cited and relied upon the judgment of the Apex Court in the case of Indian Farmers Fertilisers Co-operative Ltd. -1996 (86) E.L.T. 177 wherein the Apex Court held that pollution control apparatus/devices used in a plant to be treated part and parcel of the manufacturing process for production of the end-product. The Id. Counsel submits that in so far as transformers are concerned the same is fully covered by the decision of this Tribunal in the case of Nav Bharat Paper Mills -1996 (86) E.L.T. 501. Concluding his arguments the Id. Counsel submits that all the three items gantry crane, trolley and transformers are fully covered for the benefit of Rule 57Q in terms of the ratio of the decisions cited and relied upon. He, therefore prays that the appeal may be rejected. .

5. Heard the submissions of both sides. I find that the Apex Court in the case of Rajasthan State Chemical Works cited (supra) held that transfer of raw materials

to the reacting vessel is a preliminary operation but it is part of a continuous process but for which the manufacture would be impossible. Further the Apex Court observed that handling of the raw materials for the purpose of such transfer is then so integrally connected with the process of manufacture. Now examining the items in dispute in the light of the ruling of the Apex Court I find that gantry crane and trolley are goods used for transfer of raw materials (marble slabs) for sawing and that without carrying these to the sawing mills the production would not be viable. I, therefore hold that handling of raw materials by the gantry crane and trolley for the sawing is integrally connected with the process of manufacture of marbles. Following the ratio of the judgments of the Apex Court I hold that gantry crane and trolley shall be eligible for the benefit of Rule 57Q.6. In so far as transformers are concerned I find that transformers have been introduced as capital goods item under Rule 57Q with effect from 16-3-1995 if transformers are capital goods with effect from 16-3-1995 it cannot be said that they were not capital goods before that date. Transformers are capital goods was considered by the Tribunal in the case of Nav Bharat Paper Mills cited above it was held that transformers were capital goods and were entitled to the benefit of Rule 57Q. I do not see any reason to hold contrary view in the matter.

7. Having regard to the above discussions I hold that gantry crane and trolley and transformers are eligible for the benefit of Rule 57Q. In the result the two appeals filed by the Revenue are rejected and the impugned orders are upheld.

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