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SooperKanoon Citation : sooperkanoon.com/10413

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-27-1996

Reported in : (1997)(90)ELT391TriDel

Appellant : Ester Industries Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants filed this appeal against the order-in-appeal No.360/C.E. Mrt/93 passed by the Commissioner (Appeals) Customs and Central Excise, Ghaziabad. In the impugned order the Commissioner (Appeals) held that Modvat credit on Triethylene Glycol (TEG) is not admissible to the appellants as it is not being used in or in relation to the manufacture of final product.

2. The brief facts of the case are that the appellants are engaged in manufacture of Polyester chips falling under Chapter 39 of the Schedule to Central Excise Tariff, 1985. Among the inputs mentioned in the declaration filed by the appellant under Rule 57G of the Central Excise Rules, 1944, TEG has been mentioned as one of the inputs to be used in manufacture of Polyester Chips. A show cause notice was issued to the appellant proposing to disallow the sum of Rs. 14,120/- being the credit availed by the appellant on TEG. After considering the reply and submissions made by the applicant the adjudicating authority confirmed the demand on the ground that TEG is used in the maintenance of filter installed in the plant, which are used for filtering the liquid polymer and not as an input used in or in relation to manufacture of final product and also imposed penalty of Rs. 1,000/-.

The appellant filed the appeal and the appeal was also dismissed.

3. Ld. Counsel appearing on behalf of the appellant submitted that in terms of Rule 57A of the Central Excise Rules, 1944, Modvat credit of specified duty would be available on the goods used in or in relation to the manufacture of final product so long as input and the final product are notified in the Notification No. 177/86. The explanation to Rule 57 A provides for an exclusive definition for the term 'input'. In terms of the definition, the input includes inputs which are manufactured and used within the factory of production in or in relation to manufacture of final product. He further submitted that in terms of exclusion clause machine machinery, plant equipment apparatus tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to manufacture of final product are excluded. He further submitted that therefore the item like TEG which according to the Department alleged to have been used in the maintenance of said plant and machinery has not been excluded. Therefore even assuming that filters are plant and machinery the test to be seen is whether the inputs, i.e. TEG can be said to have been used in or in relation to manufacture of final product. The ld. Counsel relied upon the decision of the Hon'ble Supreme Court in J.K. Cotton Spinning & Weaving Co. Ltd. v. STO reported in 1985 (16) STC 563 and CCE v. Eastern Paper Industries reported in 1989 (43) E.L.T. 201. He submitted that in these cases the Hon'ble Supreme Court has given a widest possible meaning to the expression vised in or in relation to the manufacture. He further submitted that cleaning of filters by TEG should not be seen as an isolated incident. It has to be considered as part of manufacturing process as after all if this cleaning is not done then the liquid polymer cannot be filtered and therefore this input i.e., TEG functions effectively to the manufacture of final product. The filtering of liquid polymer is an important aspect in manufacture of final product.

He further submitted that TEG is not listed out in specified chemicals on which Modvat credit is not available. On the basis of Board clarification and Trade Notices have been issued and one of such trade notice appears in at page 54/C to 56-C 91 ECR Volume 35. According to its list many chemicals have been listed as not coming under the scope of eligible inputs. However TEG has not been specified in the list of ineligible input as mentioned in the Trade Notices. In view of this submission, he prays that the appeal may kindly be allowed.

4. Shri Jangir Singh, ld. DR appearing on behalf of the respondent reiterated the finding arrived at by the lower authorities.

5. Heard both sides. In this case short question is whether the TEG is vised in or in relation to the manufacture of final product as provided under the Rule 57A of the CE Rules, 1944. Admittedly the TEG is used for cleaning the filters installed in the plant which are used for filtering the liquid polymer for manufacture of final product. Hence it is used for maintaining of the filters only. Therefore it cannot be said to be used in the process of manufacture of final product i.e.

Polyester chips.

6. Regarding the submissions made by the appellants that input TEG has not been specified in the list of ineligible inputs mentioned in the An-nexure 2 in the Trade Notice No. 62/91 Misc. No. 17, dated 7-6-1991 appearing in 1991 ECR Volume 35. In that Annexure at S.No. 15 it is mentioned that all the inputs for maintenance of plant and machinery or for testing of machine effectively have been declared as ineligible input. Since the TEG is used for the maintenance of only filters, hence it is also ineligible input in terms of this trade notice.

7. Since the TEG is used for cleaning the filters only, hence Modvat credit in TEG is not admissible to the appellant. Hence we do not find an infirmity in the impugned order. The appeal is dismissed.