**Commissioner of Central Excise Vs. the India Cements Ltd.**

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**SooperKanoon Citation** : sooperkanoon.com/1167648

**Court** : Chennai

**Decided On :** Jul-19-2013

**Judge** : The Hon'Ble Mrs.Justice Chitra Venkataraman

**Appellant** : Commissioner of Central Excise

**Respondent** : The India Cements Ltd.

**Judgement** :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

19. 07.2013 CORAM: THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN and THE HONOURABLE MS.JUSTICE K.B.K.VASUKI C.M.A.Nos.659 of 2006 and 1390 of 2007 The Commissioner of Central Excise 1, Foulk's Compound, Anai Medu Salem-636 001. .. Appellant in both C.M.As. Versus 1. M/s.The India Cements Ltd. Sankari West Post Salem-637 303.

2. Customs, Excise and Service Tax Appellate Tribunal South Zonal Bench, 1st Floor Sastri Bhavan Annexe Haddows Road Chennai-600 006. .. Respondents in both C.M.As. ----- PRAYER: C.M.A.No.659 of 2006 is filed under Section 35-G of the Central Excise Act, 1944, against Final Order No.795/2005 dated 02.06.2005 in Appeal No.E/502/2004/MAS on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai and C.M.A.No.1390 of 2007 is filed under Section 35-G of the Central Excise Act, 1944, against Final Order No.438/2005 dated 15.03.2005 on the file of the Customs, Excise and Service Tax

Appellate Tribunal, South Zonal Bench, Chennai. ----- For appellant in both C.M.As. : Mr.K.Ravi Ananthapadmanabhan Senior Counsel for Central Govt. For 1st respondent in both C.M.As. : Mr.R.Saravanan -----

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.) Both these Civil Miscellaneous Appeals are at the instance of the Revenue. C.M.A.No.1390 of 2007 covers the period December, 1999 to February, 2000 and C.M.A.No.659 of 2006 covers the period October, 2000 to December, 2000.

2. The assessee herein are manufacturers of cement, falling under Sub Heading No.2502.29 of the Schedule to the Central Excise Tariff Act, 1985. The assessee availed CENVAT credit on capital goods under Section 57AA of the erstwhile Central Excise Rules, 1944 in respect of Underground Telephone Cable falling under Sub Heading No.8544.90. Admittedly, the goods were used for communication purposes in various places inside the factory premises. On the allegation that ATC Conductor PVC insulation Armoured PVC Sheathed Underground Telephone Cables are, in no way, connected with the manufacturing activity and hence, the credit taken was irregular, show-cause notice was issued for withdrawal of the benefit. The assessee contended that the cables were used only in the factory for the purpose of providing communication within the factory between different locations. Consequently, the claim of the assessee for availing MODVAT credit could not be denied. The Assessing Officer, however, rejected the plea that the capital goods should have a nexus to the final product. Since telephone cables were used for communication purpose, the claim of the assessee merited to be rejected. Aggrieved by this, the assessee went on appeal before the Commissioner of Central Excise (Appeals), who allowed the appeal based on the decision reported in 1998 (108) ELT47(Tri.) (Jawahar Mills Ltd. Vs. CCE, Coimbatore). The Commissioner pointed out that there was no dispute regarding the receipt and utilisation of the impugned cables within the factory. Thus, the claim was allowed. Aggrieved by this, the Revenue went on appeal before the Customs Excise and Service Tax Appellate Tribunal, which rejected the appeal on the ground that Section 57Q applied to the facts of the case that capital goods being used in the factory and not being an excluded item, the assessee was

entitled to MODVAT credit. Thus, the Revenue's appeal was rejected. Hence the present Tax Case Appeal.

3. Learned Standing Counsel appearing for the Revenue placed reliance on the decision of the Apex Court reported in 2007 (214) E.L.T. 481 (S.C.) (Collector of Central Excise Vs. Solaris Chemtech Limited) and 2000 (240) E.L.T. 641 (S.C.) (Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III) and contended that unless the goods in question were used in or in relation to manufacture of the final product, the assessee was not entitled to the benefit of MODVAT credit. He pointed out that the Apex Court had interpreted the expression ".in relation to". to have a wider connotation. Consequently, inputs which did not enter into the finished goods would not be entitled for MODVAT credit.

4. Countering the claim made by the Revenue, learned counsel appearing for the assessee pointed out that the reliance of the Revenue on the decisions of the Apex Court rested on the provisions as it existed during the relevant time. Thus, the decision that would have application to the case on hand would be the decision reported in 2001 (132) E.L.T. 3 (S.C.) (Commissioner of C.Ex., Coimbatore Vs. Jawahar Mills Ltd.), which confirmed the view of the Tribunal, holding that the claim of the assessee could not be negatived; consequently, no case on capital goods used in the factory was made out by the Revenue to upturn the order of the Tribunal.

5. Heard learned counsel appearing on either side and perused the material placed on record.

6. The provisions of Rule 57Q of the Central Excise Rules, 1944, as it existed during the relevant period, relating to C.M.A.No.1390 of 2007 relating to the period December 1999 to February, 2000: ". Rule 57Q. Applicability. -- (1) The provisions of this Section shall apply to goods (hereafter in this section, referred to as the ".final products".) described in column (3) of the table given below and to the goods (hereafter, in this section, referred to as ".Capital goods".) described in the corresponding entry in column (2) of the said table, used in the factory of the manufacturer of final products. ". TABLE ------------------------------------------------------------------------------------------------- Sl.

Description of capital goods falling within the schedule Description of No.to the Central Excise Tariff Act 1985 (5 of 1986) and final products used in the Factory of the manufacturer ------------------------------------------------------------------------------------------- 1 2 3 1. All goods falling under heading Nos.82.02 to 82.11; All goods specified in the schedule to Central Excise 2. All goods falling under chapter 84 ... Tariff Act 1985 ................... (5 of 1986) other than the following 3. All goods falling under chapter 85 namely; (i), (ii) (other than those falling under heading Nos.85.09 to 85.13, and (iii) 85.16 to 85.31, 85.39, 85.40) 4. .......................... ------------------------------------------------------------------------------------------- 7. The said provision was amended with effect from 01.04.2000 under the Central Excise (Second Amendment) Rules, 2000, substituting the existing Rules 57A to 57V of the Central Excise Rules, 2000. Section 57AA, defining ".capital goods"., was amended with effect from 01.04.2000 as under: ". 57AA. Definitions. - For the purpose of this section (a) ".capital goods". means - (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No.68.02 and sub-heading No.6801.10 of the First Schedule to the Central Excise Tariff Act, 1985; (ii) components, spares and accessories of the goods specified at (i) above; (iii) moulds and dies; (iv) refractories and refractory materials; (v) tubes and pipes and fittings thereof, used in the factory; and (vi) pollution control equipment, used in the factory of the manufacturer of the final products. Explanation. - For removal of doubts, it is hereby clarified that ".capital goods". do not include any equipment or appliances used in an office. (b) ".exempted goods". means goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to ".Nil". rate of duty; (c) ".final products". means excisable goods manufactured or produced from inputs, except matches; (d) ".input". means all goods, except high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production, and also includes lubricating oils, greases, cutting oils and coolants.

Explanation.- The high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever. ".

9. Going by the admitted fact that the item in question falls under Heading 85.44 and that they are used in the factory of the manufacture of fuel products and the goods not falling under the excluded item, we have no hesitation in accepting the case of the assessee that the item in question being used in the factory of the manufacturer, the assessee would be entitled to CENVAT credit on the cables.

10. In the decision reported in 2001 (132) E.L.T. 3 (S.C.) (Commissioner of C.Ex., Coimbatore Vs. Jawahar Mills Ltd.), the Supreme Court had an occasion to consider Section 57Q as it existed. The Apex Court pointed out to the definition of ".capital goods". in Clause (c) to the Explanation to Section 57Q that ".the goods enumerated in clause (c) need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer.". In so holding, the Apex Court referred to the decision reported in 1996 (86) E.L.T. 177 (S.C.):(1996) 5 SCC488(Indian Farmers Fertilisers Cooperative Ltd. Vs. Collector of Central Excise, Ahmedabad) and pointed out that the user will determine whether an item in question qualified or not for the purpose of MODVAT credit under Section 57Q. The items considered in the cases decided by the Apex Court reported in 2001 (132) E.L.T. 3 (S.C.) were power cables and capacitors in Jawahar Mills case; control panels, cables, distribution boards, switches and starters and air compressors in the case of Indian Refrigeration Co. Ltd.; electric wires and cables in the case of Kothari Sugar and Vijay Chemicals on appeals preferred by the Revenue. Thus, on a consideration of the provisions of Section 57Q, the Apex Court held that so long as the items in question are used in the factory for the manufacturer, the benefit of MODVAT credit could not be denied. The position of law with reference to the appeals before this Court thus not having undergone any change, we have no hesitation in accepting the plea of the assessee on the admitted fact that the cables were used in the factory of the manufacturer and hence, the benefit of Section 57Q would be available to the assessee.

11. As regards the reliance placed by the Revenue on the decisions reported in 2007 (214) E.L.T. 481 (S.C.) (Collector of Central Excise Vs. Solaris Chemtech Limited) and 2000 (240) E.L.T. 641 (S.C.) (Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III), the said decisions rested on the provisions relating to the particular period considered therein. While the decision reported in 2007 (214) E.L.T. 481 (S.C.) (Collector of Central Excise Vs. Solaris Chemtech Limited) related to the period 1994, the decision reported in 2000 (240) E.L.T. 641 (S.C.) (Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III) related to the period January, 2003 to October 2003, and November, 2003 to March, 2004. Thus, based on the provisions of law thus available, the Apex Court held that the electric wires not being used in the manufacture of final product, CENVAT credit was not available in such case. In the matter of considering a question as to the assessability or grant of relief under the Act, the provision as it stood at the material point of time would alone be relevant and not any other provision. In the circumstances, we reject the reliance placed on the decisions reported in 2007 (214) E.L.T. 481 (S.C.) (Collector of Central Excise Vs. Solaris Chemtech Limited) and 2000 (240) E.L.T. 641 (S.C.) (Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III) and dismiss the appeals, thereby confirming the order of the Tribunal. No costs. ksv To 1. The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2. The Commissioner of Central Excise (Appeals) Floor No.II, No.1, Foulks Compound, Anai Medu Salem-636 001 3. The Deputy Commissioner of Central Excise Erode Division Erode