**LupIn Laboratories Limited Vs. C.C.E.**

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**SooperKanoon Citation** : sooperkanoon.com/12489

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-30-1997

**Reported in** : (1998)(100)ELT52TriDel

**Appellant** : LupIn Laboratories Limited

**Respondent** : C.C.E.

**Judgement** :

1. These appeals arise out of the order of the Commissioner of Central Excise & Customs, Indore disallowing modvat credit on certain items.

2. The facts of the case in brief are that the appellants are engaged in the manufacture of bulk drugs and proprietary medicaments falling under Chapter 30 of the Central Excise Tariff Act, 1985. Scrutiny of the RT 12 returns filed by the appellants indicated that in the month of April, 1995, the appellants took credit of Rs. 2,11,358.65 on capital goods claiming that they were used for the manufacture of bulk drugs and proprietary medicaments. They also utilised the said credit for the payment of duty on the final products. The department alleged that the items on which modvat credit as capital goods was taken were not machines, machinery, plants, equipments, apparatus, tools, appliances, components, spare parts and accessories used for producing or processing of the goods or for bringing about any change in any substance for the manufacture of final products as required under Rule 57Q of the Central Excise Rules, 1944. Accordingly, a show cause notice was issued to the appellants asking them to explain as to why modvat credit of Rs. 2,11,358.65 wrongly availed by them should not be

disallowed and recovered from them and why penalty should not be imposed on them.

3. In reply to the show cause notice, the appellants submitted that the operation carried out by the capital goods on which modvat credit has been claimed in question is in the course of manufacture of final products and is very integrally connected with further operation which ultimately results in the emergence of the final products and that the said capital goods are rightly considered as used in the process of manufacture of final products and that they were covered by Rule 57Q.In support of their contention, they cited and relied upon the judgment of the Hon'ble Supreme Court in the case of CCE v. Rajasthan State Chemical Works 1991 (55) E.L.T. 444 (S.C.). They also cited and relied upon the decision of this Tribunal in the case of CCE, Meerut v. Nav Bharat Paper Mills 1996 (86) E.L.T. 501 and in the case of Mahindra and Mahindra Limted v. CCE, Aurangabad 1996 (87) E.L.T. 258 (Tribunal).

After careful consideration of the submissions made, the claim of the assessees on the impugned goods was rejected by the lower authorities.

4. Shri M.P. Devnath, learned Advocate appearing for the appellants submits that in the captioned 3 appeals a number of capital goods are involved on which Modvat credit has been denied to them. He submits that the facts appeal-wise and item-wise are as under :- Appeal No. E/990/97-NB - Electric Cable/Power Cable : It is used for carrying current to various places which is further used in the process of manufacture of goods. This view is supported by the following decisions of this Tribunal:-Jaypee Rewa Cements v. CCE Final Order No. 823/97-NB : 1997 (96) E.L.T. 167 (Tribunal).

5. Shri Y.R. Kilanyia, learned JDR appearing for the Revenue submits that Electric Cable/Power Cable are the items of general use and are not specific to any plant and machinery; that they are using these items not only in plant and machinery but also they are using for general lighting purposes inside as well as outside the factory and, therefore, prays that they cannot be considered as capital goods for the purpose of Rule 57Q.6. On careful consideration of the submissions made by both sides as well as use and location of the products as also the case law cited

and relied by the appellants, I hold that Electric Cable/Power Cable used inside the factory are the capital goods.

7. Bed Drive Assembly - the learned Counsel submits that it is a part of dehumidifier plant; that the bulk drugs manufactured by the appellants need humidified free air.

8. The learned JDR submits that this item cannot be treated as capital goods for the purpose of Rule 57Q inasmuch dehumidifier does not take part in bringing about any change in the substances used in the process of manufacture.

9. Having regard to the contentions of both sides and having regard to the part played by this item in the manufacture of final products, I hold that no Modvat credit will be admissible on this item.

10. S.S. Table Top and Petridish Stand - the learned Counsel submits that these items are used for keeping material inside the sterile area as all the items (chemicals) essentially require proper storage with normal temperature etc. He submits that basically the bulk drugs are in powder form and all these items are specifically designed so as to make them technically compatible for use in the manufacture of goods.

Moreover these goods are all required, so that they can be protected from bacteria.

11. The learned JDR submits that these are general utility items and that nothing has been brought on record to show as to how they were specifically designed so as to make them technically compatible for use in the manufacture of goods. He, therefore, submits that Modvat credit will not be admissible on these items.

12. I have heard the submissions of both sides. I find that capital goods have been defined in Explanation (1)(a) to Rule 57Q as machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products. I find that S.S. Table Top and Petridish Stand are neither machines nor machinery nor items given in Explanation (1)(a) to Rule 57Q. I also note that

they are not components, spares and accessories of the aforesaid machines, machinery, plant, equipments, apparatus, tools or appliances.

I also find that they are neither moulds nor dies nor generating sets nor weigh-bridges used in matter, I hold that no Modvat credit will be admissible on these items.

13. Marking Machine and Carton Coder Machine - the learned Counsel submits that these are essentially used for marking the various details like manufacturing date, expiry date on the foils as per the required specifications on the tablets and capsules.

14. The learned JDR submits that these are the items used after the manufacture of bulk drugs and, therefore, they cannot be termed as capital goods meant for producing bulk drugs. I note that the marking of manufacturing date and expiry date on the foils of the packing materials is the essential requirement. I note that these products cannot be marketed without incorporating these details, therefore, these items are necessary and can be treated as capital goods for the manufacture of bulk drugs.

15. Appeal No. E/991/97-NB - Cylinders - the learned Counsel submits that cylinders are specifically designed to store different types of gases; that in the manufacture of bulk drugs, the appellants store gases, liquids which are basically used to provide desired flow and pressure during the process of manufacture of bulk drugs which are contained in the cylinders; that these gas cylinders are connected directly to the pipeline fitted to the plant; that they are used basically for producing or processing of goods, therefore they are part of the plant. In support of this contention, the learned Counsel cites and relies upon the decision of the Hon'ble Bombay High Court in the case of CIT v. Electro Metallurgical Works Ltd. 1994 (207) ITR 494.

16. The learned JDR submits that cylinders are general utility items and can be used anywhere, they are not subjected to plant and machinery required in the manufacture of bulk drugs. He, therefore, submits that they cannot be treated as capital goods under Rule 57Q.17. After hearing the submissions of both sides after

examining the use of the cylinders in the process of manufacture, I hold that cylinders are part of the plant, they are used for producing or processing of the goods and, therefore, they are capital goods for the purpose of Rule 57Q.18. As regards S.S. Table and S.S. Scoop, I have already held that this is general utility item and cannot be termed as capital goods under Rule 57Q.19. Hose Assembly, Rubber Hose and S.S. Cover - the learned Counsel submits that these are flexible pipe fittings which are essentially used for supply of various utilities like nitrogen, air, drain, steam etc. to the reactor jacket to maintain specific conditions for the production of bulk drugs.

20. The learned JDR submits that they are generally utility items and they cannot be termed as capital goods under Rule 57Q.21. After hearing the submissions of both sides and after examining the location and used of the products, I am inclined to hold that Hose Assembly, Rubber Hose and S.S. Cover are part of the plant and, therefore, they are capital goods in terms of Rule 57Q.22. Static Converter - The learned Counsel submits that these are essentially used for continuous monitoring of production process.

Consequently it is essentially used in the producing or processing of goods.

23. The learned JDR submits that it has nothing to do with the production of goods.

24. On careful consideration of the submissions of both sides and use of the item, I hold that Static Converter is a part of plant, it can be treated as equipment also and capital goods under Rule 57Q.25. As regards Electric Cables, I have already held that Electric Cables are used inside the factory premises and they are capital goods for the purpose of Rule 57Q.26. Appeal No. E/992/97-NB - PTFE Hose and Flexible PTFE Line pipe fitting - the learned Advocate submits that basically these are used to transfer corrosive, hazardous materials like HCL, Sodium Hydroxide inside the plant.

27. Looking to the use of the items, I hold that they are part of the plant and can be termed as capital goods under Rule 57Q.28. Fire Extinguisher - the learned Counsel submits that these are installed for safety of the plant and other

equipments.

29. After hearing the submissions, I find that this item cannot be considered as part of the plant and machinery nor does it take part in the process or production of the final products, therefore, this item cannot be termed as capital goods under Rule 57Q.30. Safety Torch - explaining the use of these items, the learned Advocate submits that these are special type of flame-proof torch specifically used in the processing area for checking the material in the reactor during the process of manufacture.

30. After examining the use of the items, I find that if these items are part of the reactor then they are parts of machinery/plant and will be eligible for Modvat credit as capital goods under Rule 57Q but if these are taken by the individuals for checking then it is neither part of the plant nor machinery and are not capital goods, therefore, before allowing any Modvat credit as capital goods necessary verification will be necessary whether these items are fitted with reactor or not.

31. Light fitting control junction box, Vessel Lamo Switch Socket - the learned Advocate submits that these items are used as fittings covered under Chapter 85 of the Central Excise Tariff Act, 1985.

32. I agree with the submissions of the learned Counsel in this regard and hold that they are capital goods under Rule 57Q.33. Spares for trolley - the learned Counsel submits that the trolleys are basically used for transit of raw materials from one place (stores) to another (manufacturing area).

34. I find that in the case of CCE v. R.K. Marbles Limited 1997 (92) E.L.T. 276, this Tribunal held that "Gantry crane and trolley used for transfer of raw materials for sawing integrally connected with process of manufacture." Following the ratio of the above decision cited and relied upon by the learned Advocate, I hold that they are parts of trolley, therefore, they are also capital goods for the purpose of Rule 57Q.35. Rupture disc - the learned Counsel submits that this item falling under Chapter heading 84.85 is specifically covered by clause in Rule 57Q.36. I agree with this contention of the learned Counsel and hold that this item will be eligible for Modvat credit under Rule 57Q.37. I have given my findings item-wise and

appeal-wise above. The impugned order is, therefore, modified to the extent stated above and appeals are disposed of in the above terms.