

Jindal Polyester Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-30-1997

Reported in : (1998)(100)ELT48TriDel

Appellant : Jindal Polyester

Respondent : Collector of Central Excise

Judgement :

1. The Commissioner of Central Excise (Appeals) in the impugned order denied Modvat credit on certain items on the ground that they cannot be treated as capital goods for the purpose of Rule 57Q.2. The facts of the case are that the Appellants are engaged in the manufacture of Synthetic Filament Yarn. They were availing Modvat credit on certain goods as capital goods under Rule 57Q. The Department alleged that pressure gauges, process control instruments, electronic digital scale, Black Steel Tube, S.S. Powder, S.S. Filters, Digital Multimeters, Spinnerette Inspection Equipment, Quadraflow Cooling Tower Components, Cold Water Cleaning Machines are not capital goods.

Accordingly, a Show Cause Notice was issued to the Appellants asking them to explain as to why Modvat credit should not be disallowed on the items and why penalty should not be imposed on them.

3. The Appellants, in reply to the Show Cause Notice, submitted that the goods are capital goods or they are spares and, therefore, they are eligible for Modvat credit as capital goods under Rule 57Q. After careful consideration of the

submissions made, the lower authorities held as indicated above.

4. Arguing the Appeal, Shri M.P. Devnath, the Id. Advocate along with Shri Pragyan Sharma, Advocate, appeared for the Appellants and submitted that Modvat credit has been denied on the following items : The Id. Counsel submitted that this is used for measuring temperature of water in the outlet and extruder machine. He submitted that this item is necessary as it is a tool to indicate the temperature and, therefore, is covered by the decision of this Tribunal in the case of Geep Industrial Syndicate v. CCE 1996 (88) E.L.T. 753 wherein the Tribunal held that measuring and testing equipment namely, empere metre, volt metre eligible for Modvat credit as capital goods. He submitted that mercury thermometer is a measuring instrument and, therefore, is covered by the ratio of this Decision.

Shri A.M. Tilak, the Id. JDR, submitted that it is mercury, and not the thermometer, on which Modvat credit as capital goods has been claimed. He submitted that since mercury is not a measuring instrument, so it will not be covered by the decision of the Tribunal cited and relied upon by the Appellant.

I have considered the rival submissions. I find that there is force in the contention of the Id. DR. Since it is mercury which is required to be treated as capital goods, I find that mercury is not a capital goods and, therefore, it will not be eligible for Modvat credit.

It was argued by the Id. Counsel that to obtain moisture-free polyester chips suitable for spinning, they are heated by air at controlled temperature by firing the thyristers automatically. Since the Appellants were manufacturing yarn and, therefore, it was an essential item of capital goods for the appellants. In so far as the function of the item is concerned, the Id. DR submits that he reiterates the finding of the lower authorities.

On careful consideration of the submissions made, we note that Power Panels, Power Transformers or Compressors etc. are covered by the decision of the Tribunal in the case of Bell Granito Ceramics Ltd. v. CCE, Vadodara 1997 (72) ECR 694. Panel Boards are further covered by the decision of the Tribunal in the case of CCE v. Nav Bharat Paper Mills Ltd. 1996 (86) E.L.T. 501 (Tribunal)

Looking to the location and functioning of the item, we note that electronic control panels are a part of the plant and equipment for controlling the electric circulation in the system. I, therefore, hold that they are capital goods.

According to the Counsel for the Appellants, Static Converter converts the AC power supply into DC power in the plant in order to run the motor which is connected to the Extruder in the spinning machine. It was also argued that Static Converter regulates the D.C. power supply and, therefore, static converter is a part of the machine.

I have examined the location and function of the item. I also note the necessity of the product in the running of the plant. I note that Static Converter is covered by the decision of this Tribunal in the case of CCE v. Seshasayee Paper and Boards Ltd. 75. Since Static Converter and Static Inverter are parts of the UPS system and are essential for controlling the flow of electricity in the plant and machinery, therefore, they are part of the plant and machinery and are capital goods for the purpose of Modvat credit under Rule 57Q. According to the Counsels for the Appellant, Chips are processed through crystallizer to get required crystallinity and bulk density.

The tank is required to change one substance i.e. Chips containing polymer dust to the other i.e. polymer dust-free chips suitable for spinning. It was emphasised that the function of the storage tank was that of cleaning of polyster chips and then keeping it as required. The Id. Counsel submits that from the function, it is clear that it is an essential part of the machinery and plant required for the manufacture of the final product.

I agree with the contention of the Counsels for the Appellant and hold that Chips Storage Tanks are part of the plant and are capital goods for purposes of Rule 57Q and, therefore, they will be eligible for Modvat credit.

(v) Alphaline Differential Pressure Transmitter & Other Instruments & Apparatus (p/l Converter).

This is an instrument according to the Counsels for the Appellants.

It was submitted that in the spinning area, the pressure of air is required to be kept higher than that in other areas; that the Differential Pressure Transmitter is used in order to give a constant pressure in the spinning area. The Counsels submitted that these are essential instruments and apparatus required for the manufacture of the final product.

Looking to the functions of the items, their use and essentiality in the plant and machinery, I hold that these are instruments and apparatus and, therefore, Modvat credit will be eligible on them under Rule 57Q of the Central Excise Rules, 1944.

It was clarified by the Counsels for the Appellants that it is a finer component of UPS Generator and since UPS Generator is essential for running a sophisticated plant which is liable to damages because of power fluctuations and load shedding and, therefore, it is an essential part of the plant and machinery required for the manufacture of the final product in the case of the Appellant.

Alternator, no doubt, is a part of Generator. Generator of 1500 KVA is permitted under Rule 57Q as a capital goods. I, therefore, hold that Modvat credit will be admissible on Alternator.

Similarly, spares for magnetic clutch for UPS etc. will be admissible as capital goods for purposes of Rule 57Q and Modvat credit will be admissible on them.

These are common items, not necessarily parts and spares or tools for a plant and machinery and, therefore, no Modvat credit will be admissible on these tanks.

This is a measuring instrument. There are a number of decisions of the Tribunal holding that measuring instruments are capital goods for purposes of Rule 57Q. Therefore, Modvat credit will be admissible on these items as capital goods.

These are general items, can be used anywhere and not necessarily a part of plant & machinery. However, any of these items, if used inside the plant in the Machines or Electrical Equipments, they will be entitled to Modvat credit under Rule 57Q. The only condition will be that they will be used only in the plant/machinery.

This fan used for circulating the air from bottom to top in the Dryer. According to the Counsels, this is an essential part of the machine for removing moisture from Polyester Chips and to maintain constant temperature.

Looking to the function of the item, I hold that it is a capital goods and will be eligible for Modvat credit.

The Counsels for the appellants submitted that molten polymer comes out of the spinnerettes when they take the shape of polymer. Since the temperature of the molten polymer is very high, these filaments solidify with quench air; cleaning of this quench air is necessary.

For cleaning, Filaments known as Air Handling Filters are used. The Counsels submitted that it is clear from the location and function of the items that they are used in the process of manufacture of the final product.

I agree with this contention of the Counsels and hold that Modvat credit will be admissible to the Appellants on these items.

5. Having regard to the above discussions, the impugned order is modified to the extent stated above and the appeal is disposed of accordingly.

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