Dcl Polyesters Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-25-1998

Reported in : (1998)(101)ELT78Tri(Mum.)bai

Appellant : Dcl Polyesters Limited

Respondent : Commissioner of Central Excise

Judgement :
1. The appeal is directed against the order dated 7-3-1997 passed by the Commissioner of Central Excise & Customs, Nagpur, by which the Commissioner has disal- | lowed capital goods Modvat credit under Rule 57Q of Central Excise Rules totalling Rs. 10,85,025/- under Rule 57U of the Central Excise Rules. He also imposed a penalty of Rs. 3.00 lacs on the appellant under Rule 173Q. The appellants are engaged in the manufacture of Polyester Filament Yarn and Polyester chips falling under Chapter 54 & 39 of Central Excise Tariff Act, 1985. They were availing of Modvat credit of duty paid on capital goods under Rule i 57Q of the Central Excise Rules, 1944. During the scrutiny of their monthly RT 12 returns for the period 1-1-1995 to 28-2-1995 it was found that the appellants \ had taken Modvat credit on goods claiming the same to be capital goods and on examination /verification, the department found that these goods according to department were neither used for producing or processing of any goods nor (for bringing about change in any substance for the manufacture of final products.

Therefore the department was of the view that the goods were not covered under clause (a) of Rule 57Q. Show Cause Notice was issued on 30-6-1995 for disallowing the Modvat credit and the matter was adjudicated by the Commissioner, who after considering the Explanation allowed the credit in respect of goods to the extent of Rs. 8,67,780/- and disallowed credit as noted above, on certain other goods holding that they do not satisfy the definition of capital goods under Rule 57Q and the Explanation thereto.

2. The ld. Chartered Accountant Shri Vipinkumar Jain appeared for the appellants. It was submitted that the starting raw materials for their finished product are PTA in power form and MEG in liquid form; these are mixed, after pumping in separate streams into a paste mixing vessel where they are mixed ;' into a paste and then sent to esterification reactor as the first step in the polymerisation process; the material passes through five different such reactors. The ld. Chartered Accountant explained that the reactor is jacketed through which steam is passed. They have a coal fired boiler for producing steam, another boiler is fuel based which is for heating the heat transfer media which is oil passed through the reactor vessels at the end of the Polymerisation process. A polymer melt is obtained in two streams one of which is used for the spinning lines for producing the filament yarn; the other is used for producing polyester chips for which they have an air conditioning plant, which is used to produce chilled water and to produce cool and controlled air; chilled water is required for changing the liquid form of polymer melt into solid form for making chips. The cool and controlled air produced by the Air conditioning plant is necessary for production of filament yarn. The ld. Chartered Accountant contended that all the six goods on which Modvat credit has been disallowed form part of the plant, and are hence covered by Clause l(b) of the Explanation to Rule 57Q, which covered component spare parts and accessory of machines and machinery etc. used for producing or for processing of any goods as defined in clause l(a) to the Explanation.

3. The ld. SDR Shri V.K. Puri argued contra and we give below the items in dispute, the submissions made by both the sides and our conclusion thereon.

Altrasonic Multistorage Cleaner :- The ld. Chartered Accountant contended that it is a machine for removing impurities from equipment used for filtering polymer melt before passing to spinning lines. The polymer melt is filtered before it goes into the spinning lines and the filtered residue keeps accumulating and if this is not removed frequently, it will get clogged and become useless and the yarn of desired quality cannot be produced. However, the ld. SDR urged that the function of this machine is not one of processing any material or bringing about any change in any material, therefore it is not eligible for Modvat credit. However, we find that under Rule 57Q credit of specified duty on capital goods used by the manufacturer in his factory is allowed, and the same can be utilised towards payment of duty on the final product. The expression of capital goods has been defined as 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 product. The expression also is defined to cover components, spare parts and accessories of the aforesaid machines, plant etc., which is sub clause l(b) of the Explanation. The cleaner in question removes the filtered residue which is a necessary function in the plant without which the equipment will get clogged affecting output; therefore, it will be reasonable to hold that the cleaner will be eligible for Modvat credit as part of the plant.

Pneumatic Cylinders & Parts Thereof :- The ld. Chartered Accountant explained that these are part of the Pneumatic Cylinders which is a components of the Scraper used in the Polymerisation reactor which participates directly in the manufacturing of polymer and as such eligible for Modvat credit. As against this, the ld. SDR would draw attention to the Commissioner's finding that there was no proper clarification given as to how the material was used in the plant.

However, we are of the view that the location of the scraper is inside the polymerisation reactors, and reactors have a direct role to play in the manufacture of the final product and hence, there is no difficulty holding that this would be entitled to Modvat credit under Rule 57Q.Pneumatic Conveyor System and Screw Conveyor :- While the ld. Chartered Accountant submitted that the goods in question are used as accessory for the boiler for producing steam as it carries coal to the boiler and removes ash form and the ld. C.A. relied upon the Tribunal decision in the case of Nova Iron and Steels Ltd. v. Commissioner of Central Excise, Raipur - 1997 (96) E.L.T. 165 (Tribunal), holding such equipment as eligible for credit, however, the ld. SDR pointed out that the boiler is used in the auxiliary plant of the appellant and cannot be said to be used for producing or processing their final product. We however, are of the view that the Tribunal decision relied upon by the ld. C.A. is relevant, wherein the Tribunal has held similar equipment to be eligible for Modvat credit and there are more than one decision of the Tribunal holding material handling equipment as eligible for credit. It is also not understood how use of the goods in auxiliary plant would disentitle the manufacturer from availing Modvat credit as there is nothing in the Rule 57Q to indicate such a distinction between used in main and auxiliary plant apparatus. What is relevant is use by the manufacturer in his factory.

Absolute Filter/Panel Filter/Air Filter:- According to the ld.Chartered Accountant the air conditioning system used by the appellant is an industrial system and it produces chilled water which is essential for changing the liquid form of the polyester melt into solid form for producing polyester chips. The cool controlled air is very necessary as controlled for air temperature and maintenance of humidity and air purity at specified levels is called for producing good quality filament yarn. The Tribunal decision in the case of Commissioner of Central Excise v. Modi Xerox - 1996 (88) E.L.T. 530 (Tribunal) was relied upon in this context. The ld. C.A. pointed out that the Commissioner in the impugned order as relied upon the Tribunal decision in the case of CCE v. Shanmughraja Spinning Mills for disallowing Modvat credit on this item. But the ld. C.A. urged that their case is covered by the Gujarat High Court Judgment in the case of Industrial Machinery Manufacturers Pvt. Ltd. -1965 (16) STC 380 (Guj.), where the Gujarat High Court has held that the Humidifiers used by cotton textile mills in order to maintain certain humidity for the purpose of producing quality yarn, is an essential and integral part of the plant.

This decision was noted by the Tribunal in its decision Collector of Central Excise v. Modi Xerox decision 1996 (88) E.L.T. 530. The ld. SDR however pointed out that the Modi Xerox decision has merely recorded the DR's submission citing the Gujarat High Court Judgment and it has not followed that Judgment but, the decision in that case has been given independently thereof. We are however of the view that the Tribunal has not observed therein, that the reliance placed on the Gujarat High Court Judgment was not relevant. The Tribunal held that the material in question in that case namely chilled water coils used for the air handling unit, which is required for bringing down temperature in the coating room of the factory will be covered within the meaning of capital goods as per Explanation to Rule 57Q. In our view this conclusion of the Tribunal is in line with reasoning of the Gujarat High Court which has held that humidifier is an integral part of Textile Mills Manufacturing Yarn. The Tribunal in its decision in the Shanmughraja Spg. Mills case relied upon by the Commissioner did not have occasion to consider the Gujarat High Court Judgment.

Therefore, we hold that these items in dispute qualify for Modvat credit.

Electrode for Pilot Gun Assembly :- The ld. Chartered Accountant submitted that the item is component of the furnace in which Heat Transfer Oil is heated and is required for maintaining the high temperature required for the polymerisation process. However, the ld.SDR argued that this is only a lighting equipment used in the auxiliary plant not directly used for the manufacture of final product. We find that the function of these items is for activating Polymerisation reactors and as such will be covered by clause l(b) of the Explanation to Rule 57Q as component part of the plant.

Uster Tester:- The function of this tester according to the ld.Chartered Accountant is not merely to check the quality of the final product, it also helps in monitoring the various specifications of the final product based on which necessary adjustments are made in the manufacturing machine in the spinning section to ensure that product is according to the required specifications. The ld. SDR however referred to the Commissioner's reasoning in this context holding that the goods are used for testing filament yarn after they have been fully manufactured and for grading the material and hence, not covered by Rule 57Q. We however find that the decision of the Tribunal in Geep Industrial Syndicate v. Collector of Central Excise - 1996 (88) E.L.T.753 is in favour of the appellants. The Tribunal has held therein that the process of testing of various inputs as well as finished product is essential in the completion and marketing of the product. The Tribunal in that case held that ampere meter and Volt meter for measuring and testing of finished goods are essential for completion of the manufacture of final product and held that these are appliances used in the process of manufacture and therefore eligible for Modvat credit under Rule 57Q. We find that in the present case the testing of the finished product, and the defects indicated during the test are useful in correcting the machinery to ensure production of the final product according to specification. Therefore, applying Tribunal decision we hold that the item Uster Tester is eligible for Modvat credit under Rule 57Q as an appliance. The appeal is accordingly allowed.