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Commissioner of Central Excise Vs. Sunil Synchem Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-05-1998

Reported in : (1999)(107)ELT176TriDel

Appellant : Commissioner of Central Excise

Respondent : Sunil Synchem Ltd.

Judgement :

1. This is a department's appeal against the order of Commissioner (Appeals) Customs and Central Excise, New Delhi dated 5-8-1996.

2. Ld. DR submitted that the assessee are holding Registration for the manufacture of Empty Hard Shell Gelatine Capsules for the use in Pharmaceutical Industry under sub-heading No. 96.02. The assessee filed the declarations under Rule 57Q. The A.C. held that Modvat credit was not admissible on the parts of Air Conditioner and advised them not to take the Modvat credit on the parts of Air Conditioning Plant. The Commissioner (Appeals) held that the adjudicating authority erred in, (i) ignoring the fact that the slightest defect in such a product could be hazardous to human life; (ii) in misinterpretating the relevant statutory provisions, and (iii) in reaching findings which were self contradictory, which ignore the factual position and which were against the spirit and language of the legal provisions and set aside the A.C's order.

3. Department's contention is that under Rule 57Q of the Central Excise Rules, 1944 credit is admissible on the capital goods which are used for producing or

processing of any goods or bringing about any change in any substance for the manufacture of final product. The machines/capital goods which alter the temperature like air conditioners and refrigerators etc., as declared by the assessee in various declarations alter only temperature and are not used for the purposes as defined under Rule 57Q of the Central Excise Rules, 1944.

The Commissioner (Appeal)'s observations are not relevant. He has not passed a speaking order.

4. Ld. Counsel for the respondents submitted that capsules are a pharmaceutical product meant to be consumed (after medicines being put therein) by patients. It is, therefore, essential to maintain quality control and to take utmost care to ensure that the capsules - (a) meet specification standards of size, wall thickness, moisture content and total microbial count; (b) dissolve in the human body within a specified time to ensure quick assimilation of medicines; and (a) Gelatine the basic raw material, in order to produce high quality capsules, is required to meet the exact specifications of clarity, bloom strength, solubility, microbial count and purity.

(b) Hot demineralised water, meeting FDA standards, is mixed with gelatine under vaccum to prepare the gelatine solution.

(c) Dyes and opacifants are added to the gelatine solution in the hot water jacketed feed tanks.

(d) Rows of stainless steel pins are dipped into the gelatine solution for the capsules being moulded. The dipping time is controlled by special cams.

(e) The Cap and Body pin Bars rise to the upper deck as the gelatine "sets" on the Pins. Pin bars then travel on the upper and lower decks on which controlled quantity of conditioned air is blown on capsules for drying.

(f) These pins are later rotated for an even spread of gelatine on the pin's surface. This also ensure proper 'dome' thickness. Then, the capsule halves are dried, in a special section of the machine, with purified, filtered and controlled air.

(g) Capsule halves are then individually stripped from the pins, accurately cut and joined. Special equipments are used to ensure smooth and even edges. The joined capsules then pass over a conveyor belt and are collected into drums to be hygenically stored. These capsules are then sent for 'sorting' or inspection, (h) Process parameters are controlled within narrow limits. Ambient temperature is controlled within + 0.5C relative humidity within + 1% and the processing areas are kept absolutely sterile.

(i) Finished capsules undergo 100% visual inspection by trained personnel at specially designed inspection stations which are placed in dark rooms with machines having special lighting to facilitate sorting.

(j) Perfect capsules are imprinted on high speed capsule printing machine.

(k) The finished capsules are then packed in non static multi layered polythene bags and put in moisture proof fibre drums or cardboard cartons for safe storage and transit.

5. He further submitted that it will be seen from the foregoing that commencing from the stage of storage of the basic raw material unto the stage of despatch of the said capsules, it is an essential requirement that humidity and temperature in the factory premises are constantly monitored through precision controls. If that were not to be done, manufacture of the said capsules, which the appellate company, are undertaking in competition with established foreign manufacturers, with substantial export, could not be possible. Therefore, the factory premises of the appellant company have all along been equipped with machines to maintain humidity and temperature control, falling under sub-heading 8415.00. The assessee filed necessary declaration in terms of Rule 57T and claimed Modvat credit of duty allowed under Rule 57Q ibid. This was done on 31-5-1994. He further submitted that manufacture of capsules will be impossible if the parameters of temperature and humidity at various stages of manufacture are not kept under control.

The extracts of Technical Literature from U.S.A. were given to show that air-conditioning equipments like gas compressors with motors, air handlers, filters,

dehumi-difiers, controls, cooling and heating coils, are one of the essential plant/equipments in capsule making industry, and that it is essential to maintain certain ambient parameters in various sections of manufacturing premises with regard to temperature and humidity. Hence, air-conditioning equipment or machine gets covered by the term "Capital Goods" for purposes of Rule 57Q in the context of manufacture of said capsules. The A.C. took the view that Air conditioning equipment parts... are not used for producing... final products. The aforesaid goods is not covered under the definition of Capital goods provided under Rule 57Q. Looking to the purpose and intent of Modvat credit of duty schemes, and keeping in view that - (i) even those goods which are used as fuel have been accepted to be inputs, and (ii) even generating sets and weigh bridges, used in the factory of the manufacturer have been accepted to be capital goods. The concept of direct involvement which does not find support from the language of the said Rules 57A and 57Q.6. I have considered the above submissions. I observe that in view of the Supreme Court judgment in the case of J.K. Cotton Weaving and Spinning Mills Ltd. - 1997 (91) E.L.T. 34 (S.C.) in which the words and phrases 'in the manufacture of goods' have been discussed w.r.t.

Section 8(3)(b) of Central Sales Tax Act, 1956 it has been observed inter alia that: 10. ...The expression "in the manufacture" takes in within its compass, all processes which are directly related to the actual production.'Collector of Central Excise v. East End Paper Ind. reported in 1989 (43) E.L.T. 201 (S.C.) has referred to the observations of the Supreme Court in the case of J.K. Cotton Spinning and Weaving Mills Ltd. -1965 (16) STC 563 (S.C.) as follows and adopted the principle for Central Excise purposes: "4. ... manufacture of goods should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process, this Court further emphasised, is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression 'in the manufacture of goods." 7. I consider that in view of the above judgments and the principle laid down therein and item which was essential for the purpose of completion of the process of manufacture i.e. was used in the process which was integrally connected with ultimate manufacture of final product but for the process

of manufacture or processing of goods would be inexpedient was also required to be applied while considering whether an item could be treated as capital goods for the purpose of Rule 57Q. In the present case the appellants have shown and the ld.Collector has rightly held how essential the machinery items in question were for the purpose of completion of the process of manufacture and how they were integrally connected with the ultimate manufacture of final products and how but for their use the manufacture or processing of goods could be inexpedient. In other words, the ratio of the above judgments of the Supreme Court squarely applies to the present case. I therefore, see no reason to interfere with the order of the Commissioner (Appeals). Department's appeal is therefore dismissed.

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