A.C.C. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-14-1998

Reported in : (1999)(108)ELT169TriDel

Appellant : A.C.C. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appelants in this appeal have challenged the order of Commissioner of Central Excise, Raipur dated 31-1-1997 by which Modvat credit for Dumper and Loader was disallowed for purposes of Rule 57Q of the Central Excise Rules, 1944. A penalty of Rs. one lakh was also imposed on them.

2. It was contended on behalf of the appellants that Dumper and Loader were used by the appellants for shifting and handling of raw materials inside the appellants' factory and this was integrally connected with a process of manufacture of their final product 'Cement'. The appellants have relied on the earlier decisions of this Tribunal in support of their contentions. They have relied on the following decisions : 1. Larsen & Toubro Ltd. v Commissioner of Central Excise, Raipur - 1998 (101) E.L.T. 131Crasim Cement v. Commissioner of Central Excise, Raipur - 1997 (96) E.L.T. 354Collector of Central Excise, Meerut v. Mansurpur Sugar Mills Ltd. -1996 (87) E.L.T. 91 3. Ld. Counsel for the appellant Shri C. Chidambaram submitted that the Tribunal had been taking a consistent view in all the above cases that material handling equipment such as fork lift trucks, conveyor systems, EOT cranes, cane unloaders and other such machinery

and equipment would be eligible for Modvat credit as capital goods under Rule 57Q. He, therefore, prayed that the impugned order may be set aside and Modvat credit on the said items may be allowed to the appellants.

4. Shri P.K. Jain, ld. DR who appeared for the respondent Commissioner argued that the Tribunal in Madras Cements v. CCE, Raipur, 1998 (99) E.L.T. 395 has taken a contrary view. Further, he referred to the observations of ld. Commissioner in paragraph 6.1 of the impugned order holding that the items under dispute namely, Loader and Dumper are special purpose-vehicles, used for transporting the raw material. By their very nature and use, they cannot be considered either as being used for producing or processing of the goods or for bringing about any change in any substance for manufacture of the final product, cement.

They cannot also be considered an integral part of plant, machinery or equipment used in the manufacture of cement. Therefore, the said items cannot be considered to come within the ambit of definition of the capital goods for the purpose of Rule 57Q of the Rules. He also submitted that transporting of raw material cannot be considered to be a process of the manufacture nor it can be considered to be a part of processing. In this connection, he referred to the Hon'ble Supreme Court decision in Delhi Cold Storage Pvt. Ltd. v. CIT -1991 (4) STC 239 (S.C) in which the Apex Court had examined both the aspects of "Process" and "Processing". Further, material handling equipments of a specified nature has been included in the Explanation to Rule 57Q only from 16-3-1995. Having regard to these facts and the reasoning given in the impugned order of the Collector, ld/ DR submitted that the said order does not call for any interference and the same may be confirmed.

5. In rejoinder ld. Advocate submitted that the Commissioner himself as in paragraph 4 of the impugned order stated that the Dumpers and Loaders were used inside the factory. He also invited attention to paragraph 7(c) of the Tribunal decision in Larsen & Toubro Ltd. wherein the Tribunal had noted and relied on the Supreme Court decision in C.C.E., v. Rajasthan State Chemicals Works -1991 (55) E.L.T. 444 (S.C.) in which it was held that handling, lifting and transportation of raw-material is a process in relation to manufacture if these processes are

integrally connected with further operations leading to the manufacture of goods. He further submitted that Explanation I(a) to Rule 57Q would cover Dumpers as they were machines classifiable under Chapter 84 even before Clause (d) to Explanation was added by amendment dated 16-3-1995.

6. We have considered the submissions. In view of the earlier decisions relied on by the appellants, we find that their contentions have strong force. In Collector of Central Excise v. Rajasthan State Chemical Works reported in 1991 (55) E.L.T. 444 (S.C.), the Apex Court had held that a process becomes a manufacturing process when it bring out a complete transformation for the whole components so as to produce a commercially different article or a commodity. However, that process itself may consist of several processes which may or may not bring about any change at every intermediate stage. But the activities or the operations may be so integrally connected that the final result is the production of a commercially different article. Therefore, any activity or operation which is the essential requirement and is so related to the further operations for the end result would also be a process in or in relation to manufacture. Further, the transfer of raw-material is a preliminary operation and a part of a continuous process but for which the manufacture would be impossible. The handling of the raw materials for the purpose of such transfer is then integrally connected with the process of manufacture. The handling for the purpose of transfer may be manual or mechanical. Relying on the said judgment of the Supreme Court, the Tribunal had held that cane unloader used for unloading cane was an integral process in the manufacture of sugar and therefore, eligible to be considered as capital goods within the meaning of Rule 57Q (C.C.E. v. Mansurpur Sugar Mills Ltd.). In Grasim Cement v. C.C.E, Raipur (supra), the Tribunal has held that material handling machinery/equipments would be eligible for Modvat credit under Rule 57Q. In Larsen & Toubro Ltd. v. C.C.E, Raipur (supra), the Tribunal had held that material handling equipments used for handling raw-material such as wagon loader, fork lift truck, locomotive and E.D.T. Crane will be capital goods as they are integrally connected in the process of manufacture of cement since such transfer of raw-material and semi finished goods from one place to another could not be achieved by manual operation. Further, we also note that the Tribunal decision in Madras Cement Ltd. (supra) cited by the Departmental Representative does not give any

direct finding about dumpers. The Tribunal in that case had held that hydraulic excavators used in mine adjacent to the factory for mining lime stone would not be an integral part of manufacture of cement and therefore, Modvat credit will not be admissible under Rule 57A for the said item. The Tribunal had observed that the actual manufacture of cement can be taken to start only at the stage where the raw-materials which are brought in within the factory or taken in for processing are stored and thereafter rendered usable for the manufacture of cement. The Tribunal had held that the process will start from the stage where lime stone has entered the cement factory and is taken up for crushing inside the cement mill. Therefore, the process of mining carried out could not be taken to be encompassed as for manufacture of cement. We find that these observations of the Tribunal were made in the context of admissibility for Modvat credit under Rule 57A and not under Rule 57Q. Besides, in the instant case, it is on record that Loaders and Dumpers have been used within the factory and not at the mining site.

7. As a result, in the light of the above discussions, we allow this appeal and set aside the impugned order. We hold that in the circumstances of the case, no penalty is called for and the same is set aside.