

Collector of Central Excise Vs. U.P. State Electricity Board

Collector of Central Excise Vs. U.P. State Electricity Board

SooperKanoon Citation : sooperkanoon.com/14489

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-12-1998

Reported in : (1999)(63)ECC225

Judge : J T P.C., S Kang

Appellant : Collector of Central Excise

Respondent : U.P. State Electricity Board

Judgement :

1. Briefly stated the facts of this case are as follows: The respondents herein generate electricity which was liable to excise duty under the tariff item HE as it existed under the Erstwhile Centra Excise Tariff. A show cause notice was issued to the respondents alleging that the units of the electricity generated and used by the respondents for the purpose of running the auxiliary plants was not in accordance with the provisions of notification No. 51/98. inasmuch as the respondents had not categorically stated in the relevant monthly returns (RT 12 returns) that such electricity consumed for running the auxiliary plant had been received from their own generation plant or from the common grid. It was therefore, for lack of identification of electricity consumed for running the auxiliary plants in a power generating station that show cause notice was issued to the respondents. The Assistant Collector on the said show cause notice adjudicating the case ex parte though it was alleged that the several opportunities were given to the respondents herein.

2. On appeal the lower appellate authority, apart from considering that question of violation of principle of natural justice, decided the question on merits on the basis of working of the electrical system at Thermal Power Station in the affidavit of Shri R.P. Bhatnagar, Chief Engineer of the Board referred to in another matter which was remanded by the Tribunal vide its order No. E/Stay/2415/90-D. in Appeal No.E/3412-3417/90 arising out of Order-in-Original No. 161/ 86 dated 10.7.90.

3. After considering the working of the electrical system as per the affidavit of Chief Engineer Sri R.P. Bhatnagar the lower appellate authority decided the 9 other appeals before him arising out of Order-in-Original dated 14.11.90 which is before us. The lower appellate authority has extended the benefit of notification No.51/78-CE after considering the working of electrical system as per the affidavit of the Chief Engineer. The Lower appellate authority has held as follows: It appears that auxiliary equipments such as FD fans, vapour fan ts, Ash pumps, PC Feeders, water treatment Plant, Coal handling plants are essential for running the Boiler and Turbine to generate electricity. To run these auxiliary equipments the appellant needs electricity which is normally taken from the Grid. There was no evidence produced by the Department that the electricity taken from the Grid was not produced by the appellant at its own generating station. The appellant has installed energy meters which record consumption of electricity running auxiliary plants. The appellant has urged that as per Notification No. 51/ 78 electricity generated by one generating station, when utilised for running the auxiliary plant of another station, would also qualify for exemption as the important words used in the said Notification are 'Generating Stations' and 'auxiliary Plants or "such station". There is no provision in Notification No. 51/78 restricting the availability of exemption to only electricity, produced by generating station and consumed in its own auxiliary plant. A Notification has to be interpreted in terms of its simple language and no word or phrase can be imported to give a restricted meaning. The terms 'generating stations' and a 'auxiliary plants of such stations' have been used in notification. Its shows that electricity produced in one generating station and supplied for running the auxiliary plant of other station for generating purpose, would also qualify for exemption. Had the intention been to restrict the exemption only to the consumption of electricity in the auxiliary plant of the very generating station, which produced it, an express provision to this effect would have been

made in the said Notification. However, no such restriction is stipulated under Notification No. 51/78. The appellant had been submitting RT 12 returns wherein they had accounted for electricity consumed in the auxiliary plants. It is not the case of Department that the consumption of electricity for running the auxiliary plants as accounted for in the RT 12 returns, was not actually so consumed. In other words, the Department does not dispute the quantity of electricity used for running the auxiliary plants as reflected in the RT 12 returns. The only charge alleged in the show cause notices, was that in the absence of any evidence, submitted by the appellant the entire consumption of electricity was supposedly from the Grid. As discussed above, even if electricity generated by the appellant at one of its power station was taken to the Grid to run the auxiliary plants of another station, it would be entitled to exemption under Notification No. 51/78.

4. In other words, the lower appellate authority has held that the electricity generated in one generating station and used for auxiliary plant in another generating station via the common grid, is entitled to the benefit of notification No. 51/78-CE.5. The lower appellate authority has however, remanded the matter on the question of exemption of electricity generated by the respondents and used for agricultural purposes in terms of notification No.106/78-CE.6. It is against the aforesaid order that the Revenue has now come in appeal.

2. Because the learned Collector (Appeals) has ignored the restricted implication of exemption Notification No. 51/78-CE dated 01.03.78. According to well settled principles of interpretation of exemption notification, there is no scope for any addition to its language or taking away anything which is specially provided for in such notification as held in the case of Norton Synthetic Fibres & Chemical Limited v. Collector of Central Excise reported in 1992 (S.7) ELT 125 (Tribunal). The Notification specifically restricts the exemption for electricity supplied to auxiliary plants for generation purposes only whereas per findings of the Order-in-Appeal and admitted by the Respondents they have claimed exemption for electricity supplied to auxiliary plants which were definitely not engaged in generation of electricity but for distribution, transmission and other Collateral activity. Station Transformers, Water treatment plants and Ash Handling plant are not engaged in the generation of electricity and the electricity supplied to such units are not

covered under the exemption of Notification No. 51/78.

3. Because too much has been made by the Order-in-Appeals for words "generating stations" & "Auxiliary plants" being in plural which only means that exemption is applicable for electricity supplied by all generating stations to auxiliary plants of each of them which are engaged in the generation of electricity. The natural construction of this will be that auxiliary plants engaged in the generation of electric will normally receive electricity for its working for their own generating stations. Electricity supplied from the grid is only for transmission of electricity for various consumers.

8. The contention of the Revenue appears to be that benefit of notification No. 51/78-CE can be extended only on the ground that electricity generated in the power station and used in auxiliary plant of the very same generating station. Its benefit cannot be extended to electricity for working the auxiliary plant of other generating stations. Electricity supplied from the grid according to the Revenue is only for transmission of the electricity for various consumers and is therefore not entitled to the benefit of notification No. 51/78-CE.9. As regards the question of exemption under notification No. 106/ 78-CE. it has been contended by the Revenue that this was not an issue before the lower appellate authority and he should not have decided the above question.

10. Ld. JDR, Shri R.S. Sangia has reiterated the aforesaid grounds in Revenue's appeal. He submits that the electricity consumed in auxiliary plant is exempted provided the said electricity is generated in the same generating station in which auxiliary plants are located. This is clear from the use of expression "such stations". The word 'such', he submits would refer to the station' mentioned earlier and therefore consumption of electricity in such auxiliary plants should be in the generating station of electricity. Lower appellate authority's findings to the effect that electricity generated in one generating station could be utilised for generating station at another place is not a correct construction of such notification. He, therefore, submits that impugned order is not correct and needs to be set aside. As regards the use of electricity for agricultural purposes and benefit of notification No. 106/78. Ld. JDR submits that no doubt the Assistant Collector has given

findings regarding the notification No. 106/78-CE but his finding is also beyond the show cause notices. No finding can be made beyond the allegation in show cause notice. Therefore, the finding of the Assistant Collector and the Collector (Appeals) in regard to the notification No. 106/78-CE should be set aside since this was never the subject matter of the show cause notice.

11. We have carefully considered the pleas advanced from both the sides. We have gone through the relevant papers filed with the Tribunal. For better appreciation of the notification we produce the same: In exercise of the powers conferred by Rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts electricity falling under Item No. HE of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944). from the whole of the duty of excise leviable thereon: Provided that it is proved to the satisfaction of the Assistant Collector of Central Excise that such electricity is produced by generating stations and supplied to the auxiliary plants of such stations for generation purposes.

12. From the perusal of the proviso to the said notification, it is clear that electricity produced by generating stations and supplied to the auxiliary plants of such stations is exempted under the said notification. The expression generating stations in our view has been used because in a Power Plant, there may be several generating stations and the auxiliary plant may be common to several generating stations.

It may be that electricity generated in the station I of the Power Plant, may be used for auxiliary plants of the entire Power Plant. Even in such an event, electricity so generated will be entitled to the benefit of said notification. It is for this reason that the expression 'generating stations' appear to have been used. In our view the benefit of notification cannot be extended to a situation, as is existing in the present case that electricity generated at one place is given to common grid, then drawn from the common grid and for running the auxiliary plants by another generating station of the appellant at some other city or town or village. This is what happens to have been done in the present case. In our view, the benefit of the notification 51/78-CE will not be applicable in such situations. Consequently

we set aside the impugned order and allow the appeal of the Revenue.

13. As regards the benefit of notification No. 106/78-CE, Revenue is given right that this was never the subject matter of the show cause notice by which the proceedings originated in this case. Accordingly, any direction given either by the lower appellate authority or by the original authority in relation to the notification No. 106/78 are set aside. The appeals are disposed of in the above manner.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com