

Srf Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-11-1999

Reported in : (2000)LC314Tri(Delhi)

Appellant : Srf Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The above appeals arise out of the Commissioner of Central Excise (Appeals), Ghaziabad who has upheld two separate adjudication orders of the Assistant Collector who had disallowed Modvat credit on Tri Eth-ylene Glycol (TEG) and Tungsten wire on the ground that these two items are not inputs under Rule 57A of the Central Excise Rules 1944.

Both items form the subject matter of appeal No.E/3082/98-NB while the subject matter of appeal No.E/3083/98-NB is only TEG.2. The appellants are represented by Shri Bipin Garg, learned Advocate who contends that TEG is used to clear the filter through which polyester film melt is filtered during the process of conversion of melt polymer, as TEG has properties to dissolve in polyester polymer and clear the dust and TEG is, therefore, essential for the process of manufacture. They contend that Tungsten wire is used to ionise the air between "chill roll" and molten polymer and gives a sticky action to the chill roll and if it is not used molten polymer cannot be properly cast and polyester film cannot be stretched on Machine Direction Orientation (MDO) and Transverse Direction Orientation (TDO) which is an integral part of the manufacture of polyester film. They relied upon the

decision of the Hon'ble Tribunal in the case of J.K. Synthetics reported in 1996 (85) E.L.T. 286 wherein TEG has been held to be an input eligible to Modvat credit under Rule 57A and on the decision in their own case reported in 1996 (84) E.L.T. 203, wherein it was held that Trichloroethylene used to clean the mesh for filtering the molten material Caprolactum in the manufacture of nylon yarn or DMT or polyester yarn as an input eligible for Modvat credit. The reliance is placed on the decision of the Larger Bench of the Tribunal in the case of Union Carbide India Ltd. v. Collector of Central Excise, Calcutta reported in 1996 (86) E.L.T. 613, to support the appellants' claim that tungsten wire is an input entitled to credit under Rule 57A. The alternate submission of the appellants in respect of tungsten wire is that even if it is held that this item is not an input eligible to credit under Rule 57A, it would be capital goods entitled to credit under Rule 57Q of the Central Excise Rules.

3. Learned DR, Shri Arunachalam cites the decision of the Tribunal in the case of Ester Industries Ltd. v. Collector of Central Excise, Meerut reported in 1997 (90) E.L.T. 381, denying Modvat credit on TEG and submits that the lower appellate authority has correctly relied upon the above cited decision to hold that credit is not admissible on TEG. Regarding tungsten wire, he submits that it is in the nature of an accessory/appliance of the machine and, therefore, hit by the exclusion clause in Rule 57A.4. I find that in the case of J.K. Synthetics cited supra, the Bench has relied upon the Larger Bench in the case of Sri Ramakrishna Steel Industries Ltd. v. Collector of Central Excise, Madras reported in 1996 (82) E.L.T. 575, for the purpose of holding that TEG used for cleaning filters is an input entitled to Modvat credit under Rule 57A, since the cleaning process is an essential step in the process of manufacture and is connected with it. The relevant extract from J.K. Synthetics is reproduced below : 4. I have considered the submissions made by both the sides. I have also perused the records. I find that Modvat credit had been denied to the appellants in respect of the material in question, namely, Triethylene Glycol used by them in the manufacturing process on the ground that the use of the same is only for maintenance of machinery through which the polymer passes. It has been held that Triethylene Glycol is more specifically used as a part of cleaning equipment than as an input in the actual manufacture of the final product.

This view is plainly incorrect and does not take note of the fact that the eligibility criterion for availment of Modvat is that the material should be used in the manufacture of the final product or in relation to the manufacture of the final product. While holding that Triethylene Glycol is more specifically used as a part of cleaning equipment than as an input in the actual manufacture of the final product, the criterion of use in relation to the manufacture has not been properly considered. The actual scope of the said expression came up for decision before the larger Bench of the Tribunal in Sri Ramakrishna Steel Industries Ltd. v. Collector of Central Excise, Madras [1996 (82) E.L.T. 575]. The relevant observations of the Bench are extracted below :- "We are here dealing with a case where inputs are not necessarily required to be used in the manufacture of final product, but are used in relation to the manufacture of the final product, which is an expression of considerably larger import. The words 'in relation to the manufacture' are intended to set at rest all doubts. Where raw material is actually used in the main stream of manufacture of final product that is, actually used in the physical or chemical process of manufacture, it is certainly an input used in the manufacture of final product. The doubt may arise only in regard to use of some article not in the main stream of the manufacturing process but in another stream of manufacturing something which is to be used for rendering final product marketable or used otherwise in assisting the process of manufacture. Such doubt is set at rest by use of the words 'used in relation to the manufacture'. It is true that sand mould is not a raw material actually used in the manufacturing process of final product in the sense that when mixed with some other articles it would produce the final product. Sand mould is also not used in the preparation of some other article which is necessary to render the final product marketable. It is an article which has a significant role to play in the manufacture of the final product without being used in the main stream of the manufacturing process but without the use of which the final product will never come into being." 5. The aforesaid observations would equally apply in the present case. The fact that Triethylene Glycol is used for the cleaning of the equipment in which final product is made does not rule out its identity as an input in the manufacturing process. Such a cleaning process is essential for the manufacture of polyester fibre and polyester yarn. To hold that the use of the material in question is only in the cleaning of

equipment and that it is not an input in the manufacture of the final product would be an unrealistic approach.

The cleaning process is an essential step in the manufacturing process and is connected with it. Without such cleaning process the manufacturing activity will come to a stop, as rightly contended by the learned Counsel. I accept the said plea and set aside the impugned orders. The appeals are allowed.

5. Having regard to the above judgment which is based upon the Larger Bench decision, I hold that Modvat credit is available to the assessees on Triethylene Glycol.

6. As regards tungsten wire, I find that in the case of ECE Industries reported in 1998 (97) E.L.T. 146, the Tribunal has held that molybdenum wire used in the manufacture of tungsten filament is eligible for Modvat credit and does not fall under the excluded category as tool or appliance. In coming to its conclusion, the Tribunal relied upon its decision in the case of Collector of Central Excise v. Kalpana Lamps and Components Ltd. reported in 1997 (91) E.L.T. 162 which in turn relies upon the decision of the Larger Bench of the Tribunal in the case of 'Union Carbide India Ltd. v. Collector of Central Excise, Calcutta. In the Kalpana Components case, the Tribunal held that the term "tool" could not cover wire as it is used. Tungsten wire will also not be covered by the expression "appliance" as defined in the various dictionaries. The learned DR has relied upon the Tribunal's recent Larger Bench decision in the case of Jawahar Mills Ltd. reported in 1999 (108) E.L.T. 47 to contend that tungsten wire can no longer be considered to be an input, in the light of the Larger Bench decision cited supra; however, I do not agree that the Larger Bench decision in the case of Jawahar Mills alters the position that tungsten wire is to be regarded as an input within the meaning of Rule 57 A and is not one of the items falling in the excluded category. The Plea of the DR for reference to a Larger Bench on the issue whether the terms machines/machinery/plant, etc., used together should be considered as ejusdem generis or be given a wide connotation and whether any distinction can and should be made in interpreting the words "inputs used in or in relation to manufacture" and 'capital goods used in the factory for producing or processing etc.', in view of

the exclusion clause in Rule 57A is also not accepted in view of the direct decision in the case of ECE Industries. I, therefore, hold that tungsten wire is entitled to input credit under Rule 57A of the Central Excise Rules, 1944.

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