

Commissioner of Central Excise, Vs. M/S N.R.C. Ltd and M/S Century

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-02-2001

Reported in : (2001)(135)ELT1012Tri(Mum.)bai

Appellant : Commissioner of Central Excise,

Respondent : M/S N.R.C. Ltd and M/S Century

Judgement :

1. The common question in both these appeals by the Commissioner is the eligibility to credit in terms of Rule 57Q of the duty paid on the engine and alternators which together constitute a diesel generating sets.

2. Each of the respondent is engaged in the manufacture of rayon yarn and nylon yarn, tyre cord fabrics and similar products. Each of them entered into a contract for installation of a diesel generating set in its factory with the fabricator M/s Modi Mirrless Blackstone Ltd, in the case of Century Rayon Ltd and M/s Wartsila NSD (India) Ltd in the case of National Rayon Corporation Ltd. These fabricators entered into an arrangement with the manufacturer by which they sold the engine and alternator initially, and subsequently assembled these into a generating set in the factory.

3. The respondents took credit of the duty paid on the alternator and the engine under Rule 57Q. The department objected to by issue of notices. The notices were commonly worded, proposing to deny the credit on the ground that the components i.e. engine and alternators were exclusively used in the manufacture

of final product, diesel generating set, exempted from payment of duty by the tariff, and on the further ground that the manufacturers of the set were some one other than the person took the credit. The adjudicating authority in each case confirmed the proposal in the notice. On appeal from these orders, the Commissioner (Appeals), by two different orders but following the same reasoning held that credit was rightly taken. He essentially followed the ratio of an unreported decision of the Tribunal in Gujarat Ambuja Cement Ltd vs CCE (E/422/99-NB(DB). The department has appealed these decision of the Commissioner (Appeals).

4. The grounds in the appeal run as follows. The assembly of the diesel generating sets from its components amounts to manufacture. The generating set so manufactured is exempted from duty. Therefore, by application of Rule 57R (1), credit cannot be taken of the duty paid on capital goods used exclusively in the manufacture of an exempted final product. The provisions of Rule 57T (7) (Which the Tribunal in Gujarat Ambuja Cement Ltd vs CCE relied upon) will not apply because the fabricator of the generating set had not undertaken any initial setting up or modification, renovation or expansion of the plant.

5. It is no doubt true that the immediate result of assembly or putting together of the alternator and the diesel engine resulted in the emergence of a diesel generating set. To that extent, it would be correct to say that these two components were used in the manufacture of a diesel generating set, which was exempted from duty. It is necessary at this point to take note of the significant difference in phraseology between Rule 57A, relating to modvat credit, of the duty paid on inputs (other than capital goods) used in or in relation to the manufacture of the final products, and Rule 57Q relating to credit to be taken of duty paid on capital goods. Rule 57A specifically provides that the inputs must be used in or in relation to the manufacture of the finished product. There is no such requirement in Rule 57Q. All that it requires is that the capital goods must be used in the manufacture of the specified final products. The requirement that the capital goods must be used in or in relation to the manufacture of the final product is absent. That this difference in wordings is deliberate is clear from the circular of the Board explaining the changes made in the budget of 1994 part of which relates to credit on capital goods incorporated in the Central Excise Rules. Paragraph 71.5 of this

circular emphasises that "There is no reference to the expression "used in or in relation to the manufacture of final products". It goes on to say that "capital goods acquired by a manufacturer for use in his factory are eligible to modvat credit." 6. The manufacturer, in each case, acquired the components of the generating set, not for use in the manufacture of the generating set as a final product, but to generate electricity required for the manufacture of tyre cord and other such goods, which are their final product. It would therefore not be correct to say that the components were used exclusively in the manufacture of the generating set. It would be more appropriate to say that these components were put together into a generating set for the manufacture of tyre cord and other final product. The explanation that the departmental representative tendered, if accepted, would in effect result in denying modvat credit contrary to the provisions of law, in a very large number of cases. The definition of capital goods in the Table to Rule 57Q, includes components, spares and accessories of various machines, machinery, apparatus, appliances etc specified therein. Every time any manufacture brings in a components to replace a damaged or worn out components in any of the machinery in its factory, it could be argued that the component it is not directly used in the manufacture of the final product. The component can also be said to be used to manufacture a machine in which it will be fitted as a replacement, that machine already exists even in the absence of the component. Therefore, none of the components would ever be continued to be used in the manufacture of any commodity and therefore could not be capital goods. The absurdity of this conclusion destroys the merits in the submission.

7. The second ground is also equally without merit. No doubt, the manufacturer of the generating set was M/s Wartsila NDS (India) Ltd or M/s Modi Mirrless Blackstone Ltd. However, the credit that is sought to be taken is not the credit of the duty payable, if any, on the generating set. The credit is sought to be taken on the components of the generating set. Here again, the manufacturer is some one other than the person who has taken the credit. Now if the condition is that it is only the person who paid should take the credit, it will mean that credit will only be available on capital goods, if they are solely utilised in the factory of their production. The credit in no case will be available where the capital goods are taken out for fitment or installation in any other factory. Apart from the fact that

there is no such requirement in the rules, such an interpretation will totally frustrate the object of the scheme to provide modvat credit on capital goods and therefore cannot be accepted.

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