

Monnet Ispat Ltd. Vs. Cce

Monnet Ispat Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/29169

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-24-2002

Reported in : (2003)(87)ECC188

Judge : P Chacko

Appellant : Monnet Ispat Ltd.

Respondent : Cce

Judgement :

2. The short question which arises in this appeal is whether the items listed below were eligible as capital goods for Modvat credit under Rule 57-Q during the period May, 1994 to November 1995:7. CR Coils 8. HR Sheets 9. G.C. Sheets(all made of iron and steel) 3. The appellants were manufacturing sponge iron and MS ingots. For the manufacture of the former product, they were using a Rotary Kiln while for the manufacture of the latter, they were using an Induction Furnace. The appellants took modvat credit on all the above items claiming the same to be eligible capital goods under Rule 57Q. The Department, by show-cause notice, proposed to disallow the credit on the ground that the items were not eligible capital goods for Modvat credit under Rule 57-Q. In respect of Transformer (11 kV), the Department maintained that since transformers of voltage 75 kV and above were specifically brought within the coverage of capital goods under Clause (d) of the Explanation to Rule 57-Q(1), w.e.f. 16.3.1995 (under Notification No. 11/95-CE (NT), transformers of lower voltages like the one involved in the instant case stood excluded from the coverage of capital goods. The Department's view

was contested by the party. Ultimately, the jurisdictional Commissioner of Central Excise, in adjudication of the dispute, held that the afore-mentioned items were not eligible for Modvat credit under Rule 57-Q. Consequently, Modvat credit amounting to Rs. 6,42,674 stood disallowed to the assessee. Hence the present appeal.

4. The learned Counsel for the appellants submits that all the items except those mentioned at Sl. Nos. 9 and 10 above were used for replacement of damaged/worn out parts of Rotary kiln or the structural support of the kiln and the furnace. He submits that the items were covered under Clause (b) of the Explanation to Rule 57-Q(1) as the Rule stood during the material period. The GC sheets mentioned at Sl. No. 9 above were used in the roofing for the Industrial Furnace. According to the Counsel, this item was also a part of the manufacturing plant and hence covered under Clause (b) *ibid*. The transformer mentioned at Sl.

No. 10 was also a part of the manufacturing plant inasmuch as its function was in the H.T. sub-station, within the factory premises, supplying electricity to the manufacturing plant. The learned Counsel thus claims the benefit of Clause (b) *ibid* in respect of the transformer also.

5. The learned DR submits that the Plates, Angles, Channels, etc. used in the structural support to the Rotary Kiln formed a part of the immovable civil foundation and hence not eligible as capital goods under Rule 57-Q of the Rules. In regard to GC Sheets, the learned DR submits that the item was admittedly used for roofing the furnace and hence formed a part of the building that housed the furnace. It did not become part of the furnace itself. Referring to the transformer, the learned DR submits that only transformers of voltage 75 kV and above were included in the category of modvatable capital goods *w.e.f.*

16.3.1995, which, according to him, meant that transformers of lower voltages were excluded from the category of modvatable capital goods *w.e.f.* that date. The reference was to Clause (d) of Explanation to Rule 57-Q(1), which was inserted by Notification No. 11/95-CE(NT) dated 16.3.75.

6. Examined the submissions. The learned Counsel has cited certain decisions rendered by Two Member Benches of this Tribunal in support of his contention. In the case of *Global Sugar Ltd. v. CCE.*, Kanpur, 2000 (119) ELT 611, it was held that capital goods credit was available for M.S. ingots, M.S. channels, plates, shapes and sections used for the assessee's boiling house. In *Hindustan Sanitary ware Industries Ltd. v. CCE.*, Hyderabad 2001 (47) RLT 837, it was held that iron and steel channels used in the support frame of furnace were eligible capital goods for Modvat credit under Rule 57-Q. In *Lloyds Metals & Engineers Ltd. v. CCE.*, Nagpur, 2002 (50) RLT 109, it was held that capital goods credit was not deniable in respect of HR steel plates used in constructing the foundation for certain machinery in the factory merely on the ground that the said items became a part of the immovable property.

7. In the instant case, the iron and steel plates, channels, angles and other items used for replacement of damaged/worn out parts of the Rotary Kiln, should be held to be eligible capital goods under Rule 57-Q in the light of the cited decision of the Tribunal in *Global Sugar Ltd.* In so far as the iron and steel items used in the structural support to the Kiln are concerned, the question whether the present appellants' goods were eligible capital goods appears to be squarely covered in their favour by the Tribunal decision in *Hindustan Sanitaryware Industries*. In *Lloyds Metals & Engg.* (supra), the question was whether the benefit of modvat credit under Rule 57-Q could be denied in respect of HR plates used in the civil foundation for certain machinery in the assessee's factory on the ground that the goods became permanently attached to the earth. The Tribunal answered the question in the negative and held the HR plates to be modvatable capital goods.

The ratio of this decision is applicable to the items used for replacement of parts of the structural support to the Kiln and the furnace. However, in so far as the GC sheets used in the roof of the furnace are concerned, none of the cited decisions appears to support the appellants' claim. The GC sheets admittedly became a part of the building which housed the furnace and the same stood on a different footing. Any other item which might have been used in such building will also stand on the same footing and such items will be held ineligible for capital goods credit.

8. In view of the findings already recorded, I affirm the decision of the Adjudicating Authority insofar as the modvatability of the GC sheets and other items used in the building that housed the induction furnace is concerned. In respect of the remaining items, it is held that the appellants are eligible for capital goods credit under Rule 57-Q.9. A little more requires to be said about the transformer. The said transformer was 11 kV and the same was installed in the factory after 16.3.1995. Notification No. 11/95-CE(NT) inserted Clause (d) in the Explanation to Rule 57-Q(1) thereby specifically including transformers of 75 KV and higher voltages. The argument of the learned DR is that such specific mention of transformers of 75 kV and higher voltages in the category of modvatable capital goods w.e.f. 16.3.1995 would mean exclusion of transformer of lower voltages (like the one involved in the instant case) from the category of modvatable capital goods. On the other hand, the learned Counsel's argument is that the benefit of Clause (b) would still be available to transformers of lower voltages.

10. I note that Notification No. 11/95-CE(NT) only specified certain goods under the new Clause (d) for the purpose of Modvat credit and did not in any way detract from the applicability of the pre-existing Clauses (a) to (c). Clause (a) declared that plant, machinery equipment etc. used for the manufacture of final products were eligible for Modvat credit. Clause (b) laid down that parts, components and accessories of such plant, machinery, equipment etc, were also eligible for Modvat credit. As rightly contended by the Counsel, the appellants' transformer which was admittedly a part of the H.T. sub-station supplying electricity to the manufacturing plant which was admittedly located within the factory premises, was squarely covered by Clause (b) as it formed a part of the plant falling under Clause (a). The Hon'ble Supreme Court has upheld the decision of the Tribunal's Larger Bench that cables and wires used for supplying electricity to a manufacturing plant are themselves a part of the plant. Following this ratio, the transformer also should be held to be a part of the appellants' plant.

Accordingly, I hold that the transformer of 11 kV voltage installed in the appellants' factory after 16.3.1995 is squarely covered by Clause (b), unaffected by Clause (d). Accordingly, it is eligible for Modvat credit. In the result, the appeal stands partly allowed.

