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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-12-2002

Reported in : (2003)(88)ECC442

Judge : P Chacko

Appellant : Krishna Mohan Beverages and

Respondent : Cce

Judgement :

1. This appeal of the assessee is against the denial, by the lower appellate authority, of Modvat credit of Rs. 1,07,421 on certain goods under Rule 57Q of the Central Excise Rules, 1944 for the period 29.12.95 to 9.2.96.

(i) U.T. High Pressure Steam Jet Cleaning Machine (CET Heading 84.24) (ii) Compressor, stop valves, drive set, V-belt--all parts of a refrigeration system.

4. Ld. Commissioner (Appeals) held that the Steam Jet Cleaning Machine was not covered as capital goods under Rule 57Q ibid by reason of its classification under CET heading 84.24. He was, impliedly, relying on Clause (d) of Explanation (1) to Rule 57Q(1) as the rule stood at the material time. Insofar as the compressor and other components of the refrigeration system are concerned, Ld. Commissioner (Appeals) observed that they were not covered under the definition of capital goods, but he did not state any explicit reason. In this appeal against the decision of the Commissioner (Appeals), the appellants have raised certain grounds with

reference to the provisions of Rule 57Q as the rule stood during the period of dispute, as also to the CBEC Circular No. 276/110/96-TRU dated 2.12.96 [1996 (88) ELT T-57]. The appellants have also given a brief account of the use of the goods in question.

The steam jet cleaning machine was used for ridding the main machines engaged in the manufacture of final product, of putrefying matter so as to maintain such machines in hygienic condition, which was essential for the final product (aerated waters) under Food Products Control Order. Contextually, the appellants were working as a franchisee of M/s. Pepsi Foods Ltd. Regarding compressor and other parts of refrigeration system, it has been stated that, as the said system was essential for keeping the temperature below 4C for Carbon dioxide to be retained in the final product during the course of its manufacture, the compressor and the other parts of the system were also essential for the manufacture of the final product. The appellants, therefore, have claimed that all the goods in question were eligible capital goods under Rule 57Q for Modvat credit.

6. Ld. Counsel for the appellants submits that the Steam Jet Cleaning machine has been disqualified by the authorities below, under Rule 57Q, on the ground that the item fell under CET Heading 84.24. While conceding that, under Clause (d) of the Explanation to Rule 57Q(1), machines falling under CET Heading 84.24 were not specifically included in the coverage of capital goods, Ld. Counsel submits that the cleaning machine was squarely covered under Clause (b) of the Explanation and hence eligible for Modvat credit. He submits that, if the cleaning machine is not used, the manufacturing plant would be rendered unhygienic on account of bacterial putrefaction of sugar syrup. Any such unhygienic condition would not be desirable for the final product, for which such norms of hygiene as prescribed under the Food Products Control Order were necessary to be maintained. The Steam Jet Cleaning machine was, therefore, a part of the manufacturing plant. If it could not be treated as a part of the manufacturing plant, it would, in any case, be an accessory to the plant. In either case, it would be covered under Clause (b). According to Ld. Counsel, the coverage of the item under Clause (b) is not affected by anything contained in Clause (d).

With regard to the remaining items, Ld. Counsel submits that the lower appellate authority has not stated any reason for rejecting them under Rule 57Q. That authority has correctly found that the compressor and the allied items are parts of the refrigeration system. That the refrigeration system was absolutely necessary for the manufacture of aerated waters has not been disputed by the lower appellate authority.

In such circumstances, the compressor and allied items ought to have been held as eligible capital goods on the strength of the above findings recorded in the impugned order. Ld. Counsel has relied on the Board's Circular dated 2.12.96 in support of his submission that any goods excluded from the coverage of Clause (d) could still fall within the coverage any of the pre-existing clauses of the Explanation to Rule 57Q(1). He has also relied on the decision of the Hon'ble Supreme Court in CCE v. Jawahar Mills Ltd. 2001 (77) ECC 1 (SC): 2001 (132) ELT 3 (SC). In relation to the Steam Jet Cleaning Machine, Ld. Counsel has relied on the decision of the Tribunal's Larger Bench in Eureka Forbes Ltd. v. CCE, Chandigarh, 2000 (71) ECC 295 (Tri.-LB); 2000 (120) ELT 533 (Tri.-LB), while in relation to compressor, he has relied on the Tribunal's decision in Watsol Organics Ltd. v. CEE, Hyderabad, 2002 (140) ELT 259 (Tri-Chen.) 7. Ld. JDR. has strongly defended the order of the Commissioner (Appeals). In relation to the Cleaning Machine, his submission is that the machine was not used during the course of the manufacturing process. Only those goods which were used during the course of the manufacturing process could be treated as eligible capital goods under Rule 57Q for Modvat credit. With regard to compressor, the DR would like to press into service Clause (d) of Explanation to Rule 57Q (1), whereunder compressors other than of a kind used in refrigeration and airconditioning were recognized as eligible capital goods. It is the argument of the DR that a compressor used for refrigeration purpose stood excluded from the coverage of eligible capital goods. According to him, this exclusion will not be defeated by anything contained in the earlier clauses of the Explanation. Ld. DR has, however, no comments on the reliance placed by the Ld. Counsel on Jawahar Mills or the Board's Circular.

8. Examined the submissions. Use of any of items under reference is not in dispute. Aerated waters manufactured and cleared by the appellants during the

period of dispute were admittedly subject to the terms of the Food Products Control Order. Such a product could be manufactured, stored, packed etc. only in such conditions of hygiene as prescribed by the Government under the above Control Order. Admittedly, the High Pressure Jet Cleaning Machine was used for cleaning those parts of the plant which were prone to putrefaction of sugar under bacterial action.

The putrefying matter required to be cleared so as to ensure the prescribed hygiene for the manufacturing as well as the manufactured product. The cleaning was therefore, absolutely essential for the manufacture of the final product. Counsel has argued that, the Clearing Machine could at least be recognized as an accessory to the manufacturing plant. This argument also seems to make sense. Under Clause (b) of the Explanation to Rule 57Q(1), accessories of the manufacturing plant were capital goods eligible for Modvat credit during the period of dispute. Ld. DR has heavily relied on Clause (d).

I have not found any non-obstante expression in that clause to exclude the applicability of Clause (b). Therefore, the coverage of the goods in Clause (b) was not affected by anything contained in Clause (d) and hence the item was eligible for Modvat credit in terms of Clause (b).

The Board Circular relied on by the Counsel is in support of this position. I also note that the decision of the Tribunal's Larger Bench in Eureka Forbes (Supra) supports the argument of the counsel that the Jet Cleaning Machine could be treated as an accessory to the manufacturing plant of the appellants. In the result, I hold that the Cleaning Machine under reference, whether as part or as accessory of the plant, was eligible for Modvat credit in terms of Clause (b) of the Explanation to Rule 57Q(1). As regards the compressor and allied items, it is the finding of the Commissioner (Appeals) that they were parts of the refrigeration system. That system was essential for maintaining the temperature below 4C so that Carbon dioxide (one of the inputs for aerated water) could be kept in the dissolved state in the final product. If the temperature exceeds 4C, the gas will bubble out as its solubility in water decreases with increase of temperature. The essentiality of the refrigeration system for the manufacture of the final product is thus indisputable. It has not been disputed by the lower appellate authority, either. I, therefore, hold that the compressor and other parts of the refrigeration system used in the appellants' factory were eligible capital goods in terms of Clause (a) of the Explanation to Rule 57Q(1). The cited decision of the Tribunal in Watsol Organics (supra) appears to support the appellants' case in relation to compressor and allied items.

9. In the result, the order of the Commissioner (Appeals) in relation to the impugned goods and the appeal is allowed. The miscellaneous application for amending the memo of appeal also stands allowed.