Fathima Panels Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Feb-14-2003

Reported in : (2003)(154)ELT225Tri(Bang.)

Judge : G B Deva

Appellant : Fathima Panels

Respondent : Commr. of C. Ex.

Judgement :

1. Issue relates to Modvat credit on capital goods i.e. radiant coil.

It was the contention of the party that radiant coil is part and parcel of Thermal Fluid System and in view of the specific entry under Rule 57Q, Modvat credit as such cannot be denied. He said that the Department has denied Modvat credit on the ground that the heat generated out of the Thermal Fluid System has been extended to the neighbouring factory.

2. Shri Munir Ahmed, appearing for the Revenue while justifying the action of the Department in denying the benefit referred to the decision of the Tribunal in the case of Sree S.G.K. Industries, as per Order No. F/12/2002, dtd. 7-1-2002 [2002 (147) E.L.T. 345 (Tribunal)], particularly he drew my attention to Para 6 of the Order, which is as under :- '6. I have carefully considered the submissions made by both sides.

Rule 57R(2) Second Proviso inserted by Notfn. No. 11/95 specifies that "Provided further that the credit of specified duty shall be allowed in respect of capital goods used for generation of electricity, used within the factory of production for manufacture of final products or for any other purpose." I am not convinced with the argument advanced on behalf of the party that the wordings "for any other purpose" denote electricity generated can be used not only in the factory of production but for other purposes and elsewhere also. In the context, the wording "for the purpose" was used cannot be enlarged or expanded to include any other purpose outside the factory. It is not in dispute that D.G. Sets were installed within the factory and some portion of the power was given to a neighbour.

The Department Representative is right in pointing out that condition and restrictions imposed under Rule 57D with reference to inputs are similar to the wordings used in Rule 57R(2) in respect of capital goods. But at the same time, I am in agreement with the argument advanced on behalf of the department that entire Modvat credit has to be denied since some portion of the power has been distributed to other unit other than the factory. There is no justification in denying entire Modvat credit in the facts and circumstances. Proportionate credit should be disallowed to the extent of power generated has been transferred to other unit. In other words, Modvat is admissible on capital goods i.e. I.G. Set to the extent power has been utilized in the factory of the manufacturer. Proportionate Modvat is admissible. By interpreting the provisions of Rule 57R(2) referred to above, I hold that credit of specific duty shall be allowed in respect of capital goods used for generation of electricity used within the factory of production of manufacture of final products and not elsewhere. Proportionate Modvat credit has to be worked out by the adjudicating authority on hearing the party and to pass an order by giving such relief.' 3. I have carefully gone through the submissions made by both sides and perused the records. In the facts of this case, the main machinery Thermal Fluid System is installed in the appellant's factory and radiant coil being a part and parcel of the Thermal Fluid System Modvat credit cannot be denied on the ground that the heat generated out of the Thermal Fluid Sys tem has been extended to the neighbouring factory. In the case referred to by the Departmental Representative, Modvat credit has been denied wherein it was held that capital goods i.e., D.G. Set has been utilized for distribution of power in respect of other unit than in the unit of installation. In the facts and circumstances particularly in view of the fact that radiant coil being a part and parcel of Thermal Fluid System and the heat generated therein is used in the appellant's factory, there is no justification in denying the benefit as such.