

Commissioner of Central Excise Vs. Narmada Sugar Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-2003

Reported in : (2003)(155)ELT362TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Narmada Sugar Ltd.

Judgement :

1. In this appeal, the Revenue has questioned the validity of the impugned order-in-appeal dated 10/13-5-2002 vide which the Commissioner (Appeals) has reversed the Order-in-Original and allowed Modvat credit to the respondents in respect of the capital goods, detailed in the show cause notice.

2. The respondents availed Modvat credit of Rs. 15,000/- under Rule 57Q of the Rules on the structural beams in April, 1994 and they were served with show cause notice for disallowing the Modvat credit on the ground that they were used for making platform. The respondents contested the correctness of the show cause notice by alleging that platform had been used by them for installation of the machinery meant for production of the final product and as such, the structures used in the construction of the platform were eligible for Modvat credit. The adjudicating authority disallowed the Modvat credit on the ground that the goods were used for the construction of the platform which is civil structure. The Commissioner (Appeals), on appeal had reversed that order by holding that the

structures including beams being very much part of the capital goods, were eligible for Modvat credit. He has followed the ratio of law laid down in the case of CCE, Chandigarh v. Steel Strips Ltd. 3. The learned SDR has contended that structural beams having been used in the civil construction (platform) were not eligible for Modvat credit and that the impugned order of the Commissioner (Appeals) suffers from legal infirmity and as such, deserves to be reversed. She has also contended that ratio of law laid in Steel Strips Ltd., relied upon by the Commissioner (Appeals), is not attracted to the facts of the present case and mover, it has been earlier also distinguished in the case of Devidayal Aluminium Industries (P) Ltd. v. CCE, Meerut - 2000 (121) E.L.T. 114.

4. On the other hand, the learned Counsel has contended that there was no allegation in the show cause notice that structural beams had been used in the civil construction and as such, on this ground, the Modvat credit could not be disallowed by the adjudicating authority and that the impugned order of the Commissioner (Appeals) by following the ratio of law laid down in Steel Strips Ltd. is perfectly valid. He has also referred to the ratio of law laid down in Steel Authority of India Ltd. v. CCE, Coimbatore Rishabh Steels Ltd. v. CCE, Meerut - 2002 (147) E.L.T. 813 (T) = 2002 (52) RLT 322, for contending that the impugned order passed by the Commissioner (Appeals) is perfectly valid.

6. When the respondents took the Modvat credit of the disputed amount in April, 94, they were served with show cause notice wherein it was alleged that so called 'capital goods' were not used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product and as such, did not fall within the definition of capital goods in terms of Rule 57Q of the Rules. In response to this notice, the reply submitted by the respondents was that structural beams had been used for construction of platform which was further utilised by them for installation of the machinery meant for the manufacture of the final products. Therefore, it is quite evident that the structural beams had been used by the respondents for raising construction of the platform and this fact is also evident from perusal of the impugned order of the Commissioner (Appeals). The platform is civil construction and cannot, by any stretch of imagination, be said to be part of the machinery installed for the manufacture of the final product.

Therefore, structural beams used for the construction of platform did not fall within the ambit of the capital goods in terms of Rule 57Q of the Rules. As per provisions of the said Rule, only machine, machinery and parts thereof used in or in relation to the manufacture of the final product fall within the definition of the capital goods. The platform constructed by the respondents to facilitate the installation of the machinery for the production of final product, could not be said to be part and parcel of the machinery and as such, the beams used for raising platform, were not eligible for Modvat credit.

7. The ratio of law laid down in *Steel Strips Ltd. (supra)*, referred by the learned Commissioner (Appeals), is not attracted to the facts of the present case. In that case, angles and joints were held to be eligible for benefit of Modvat credit, being part of the machinery. But in the case in hand, as observed above, the platform cannot be considered to be part of the machinery. Similarly, the law laid down in *Steel Authority of India (supra)*, referred by the Counsel, is not applicable to the facts of the present case. In that case, it has been held that Modvat credit is eligible on refractories, steel structures, steel castings, GP sheets, etc., for having been used in or in relation to the manufacture of final product. In the instant case, as observed above, the platform cannot be considered to be part of the machine or machinery. Similarly, the law laid down in *Rishabh Steels Ltd. v. CCE, Meerut (supra)*, referred by the Counsel, is of no avail to the respondents for claiming the Modvat credit. In that case also, the Modvat credit was allowed on MS angles used for preparing stand for furnace and they were taken to be part of the furnace. But such, is not the position in the case in hand. Similarly, in *CCE, Chandigarh v. Steel Strips Ltd. (supra)* as noted above. Angles and joints having been used to manufacture conveying system in rolling unit, were held to be admissible for Modvat credit being not part of the civil structure.

But, in the instant case, as observed above, structural beams had been used for the construction of the platform which is civil structure. In *Devidayal Aluminium Indus. (P) Ltd. v. CCE, Meerut (supra)*, referred by the learned SDK, the ratio of law laid down in *Steel Strips Ltd.*, has been distinguished and observed that where inputs had been used for civil structure and were not part and parcel of the furnace or platform, the same would not be covered by the definition of the 'capital goods'.

The ratio of law laid down in this case very aptly applies to the case of the respondents, in the light of the facts and circumstances, detailed above.

9. In view of the discussions made above, the impugned order of the Commissioner (Appeals) allowing Modvat credit of the disputed amount to the respondents, cannot be sustained, being contrary to law and as such, deserves to be set aside.

10. Consequently, the impugned order of the Commissioner (Appeals) is set aside and Order-in-Original passed by the adjudicating authority disallowing Modvat credit to the respondents, is restored. The appeal of the Revenue stands allowed.

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