

Commr. of Central Excise Vs. Polychem Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-19-2003

Reported in : (2003)(162)ELT501Tri(Mum.)bai

Judge : K Kumar

Appellant : Commr. of Central Excise

Respondent : Polychem Ltd.

Judgement :

1. This is an appeal filed by the Revenue against allowing credit on P.B. Warm Wheel, Flow Switch and Refrigeration Compressor. Shri M.H.Sheikh, Learned J.D.R appearing on behalf of the Revenue submits that as regards P.B. Warm Wheel, it is used in effluent treatment plant for the treatment of effluent or industrial waste, which is totally a separate process distinguishable from the manufacturing process. The credit is to be allowed on the goods utilised for manufacture of final products only and not for post manufacturing processes. As regards flow switch, he submits that it is used for compressor controlling the manufacturing process of finished product and does not contribute to bringing about any change in any substance for the manufacture of final product. Therefore, the credit on flow switch is not allowable. So far as refrigeration compressor is concerned, which is used for the chilling plant of water and there is no direct nexus with the manufacturing final product. Therefore, the credit is not allowable on this item also.

2. Shri S.V. Yakkundi, Advocate, appearing on behalf of the respondents submits that refrigeration compressor was brought under the ambit of definition of capital goods under Rule 57Q by Notification No.11/95-C.E. (N.T.) dated 16-3-95 and as such the appellate authority could not have allowed the credit on this item before 16-3-95. In the present case the period involved is November to December 1995 and as such the refrigeration compressor clearly falls within the purview of the capital goods on that date. The Ld. Advocate also submits that so far as P.B. Warm Wheel is concerned, the Commissioner (Appeals) clearly stated that it is an essential item for pollution control in the present day circumstances and equipments being a necessary item for functioning of plants. As regards flow switch, he submits that the Commissioner (Appeals) has given very reasonable reasoning stating that this is to regulate the function of compressor and the item can be treated as equipment or parts essential for efficient functioning of plant and machinery and thus can be treated as capital goods under Rule 57Q. As regards refrigeration compressor he submits that the decision in the case of Valley Abrasives Ltd. v. C.C.E, Jamshedpur - 1997 (91) E.L.T. 700 (Tribunal) may be applicable and as such the credit may be allowable even before 16-3-1995. He also refers to the decision in the case of Collector of Central Excise, Meerut v. Nav Bharat Paper Mills - 1996 (86) E.L.T, 501 (Tribunal) to support his contention. However, the Ld. J.D.R clearly distinguishes that the case is related to transformers and ratio cannot be made applicable to the present case.

3. After hearing the rival submissions and perusal of the records, I find that the Ld. Commissioner (Appeals) has considered in detail while allowing credit on the refrigeration compressor. The Ld. Counsel for the respondents has brought to my notice the decision of the Apex Court in the case of C.C.E., Coimbatore v. Jawahar Mills Ltd. - 2001 (132) E.L.T. 3 (S.C.) wherein the Supreme Court inter alia held that the goods enumerated in Clause (c) need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer. Thus, it can be seen that the language used in the explanation is very liberal.

Besides, it is also held that the nexus is not necessary. Since the Commissioner (Appeals) has not discussed clearly the amendment made effective from 16-3-95 in Rule 57Q with regard to the definition of the capital goods, I consider it necessary that the case is remanded to him to consider the said amendment in detail keeping in view the decision of the Apex Court in the case of the Jawahar Mill while adjudicating the matter de novo. The appeal is accordingly allowed by way of remand.

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