

Neer Shree Cement Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-21-2003

Reported in : (2003)(161)ELT418TriDel

Judge : S Kang, a T V.K.

Appellant : Neer Shree Cement

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in the appeal, filed by Neer Shree Cement, is whether Capital Goods Credit is available to them under Rule 57A of the Central Excise Rules, 1944 in respect of the Diesel Locomotive Engine.

2.1 Shri P. Malik, learned Chartered Accountant, submitted that the Appellants manufacture cement and have taken Modvat credit of the duty paid on diesel locomotive engine, being a material handling equipment; that the Assistant Commissioner, under Order-in-Original No. 51/2001 dated 2-7-2001 disallowed the Modvat credit on the following two grounds : (i) Since in this case the transportation work done by the Diesel Locomotive Engine can not be treated as process of handling of raw material in relation to manufacturing process integrally connected with further operation, leading to manufacture, the said engine can not be treated as capital goods as per the provisions of Rule 57Q(1) as existed at the relevant time. As such no Modvat credit on the said Engine is admissible, and (ii) The Diesel Locomotive Engine is not being used within the factory of the

Appellants.

2.2 He, further, mentioned that the Commissioner (Appeals), under the impugned Order, overruled the Objection No. (i) holding that diesel locomotive engine is a capital goods used for handling of raw essential for the manufacture of cement; that, however, the Commissioner (Appeals) has upheld the objection No. (ii) observing that railway line all of 11 kms is located within the factory premises of M/s Mangalam Cement which is a separate legal entity. The learned Chartered Accountant contended that the said engine is used within their factory as the Appellants' unit is being owned by M/s Mangalam Cement Ltd. which is also located in the same industrial plot; that both M/s Mangalam Cement Ltd. and the Appellant unit would be treated as a singular factory within the meaning of Section 2(e) of the Central Excise Act; that it has been held by the Delhi High Court in Delhi Cloth General Mills Co. Ltd. v. Joint Secretary, Government of India, 1978 (2) E.L.T. (J 121) that the "meaning of factory is not restricted to only the part in which the excisable goods are manufactured. On the other hand, it includes the whole of the premises in a part of which such goods are manufactured." He claimed that Railway siding is in the precinct of the factory which is evident from the ground plan of the factory. He also relied upon the decision in Shriram Pistons and Rings Ltd. v. CCE, 1990 (48) E.L.T. 405 (T) wherein it has been held by the Tribunal that cycle stand falls within the term 'factory' although no manufacturing or storage actually takes place there. Finally the learned Chartered Accountant relied upon the decision in Ambuja Cement Eastern Ltd. v. CCE, Raipur, 2000 (50) RLT 840 (CEGAT) wherein the Modvat credit on capital goods used in lime stone mines outside the factory has been allowed by the Tribunal.

3. Countering the arguments, Ms. Charul Baranwal, learned SDR submitted that it has been settled by the judgment of the Supreme Court in Jaypee Rewa Cement v. CCE, 2001 (133) E.L.T. 3 (S.C.) that capital goods credit under Rule 57Q is available only in respect of machine/machinery used in the factory; that as the railway line is in the premises of M/s Mangalam Cement Ltd., Modvat credit in respect of diesel locomotive engine can not be taken by the Appellants as the said engine is not used inside the factory of the Appellants; that at the relevant time the factories of M/s Mangalam Cement Ltd. and the Appellant factory were registered

separately and as such cannot be treated as one factory; that ownership of the factory is not material as one company can own many factories.

4. We have considered the submissions of both the sides. Rule 57Q at the relevant time provided for the availment of credit of the duty paid on the capital goods used by the manufacturer in his factory. It has been settled by the Supreme Court in the case of Jaypee Rewa Cement, supra, that capital goods credit is available only in respect of machine/machinery used in the factory. Thus for being eligible to take Modvat credit of the duty paid on the capital goods, it is essential that the same is used within the factory of the manufacturer. As per Section 2(e) of the Central Excise Act, "factory" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part, of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on. We observe from the Grounds of Appeal that the averment made by the Appellants is that "the entire track of 11 KM including the Exchange Yard situated at a distance of 7 KM from the Railway Station Morak is situated within the precincts of M/s Mangalam Cement Ltd. (the owners of the Appellants' unit)." It is thus apparent that the Railway track is located in the factory premises of M/s Mangalam Cement Ltd. The submission of the learned Chartered Accountant that the Railway track is within the precincts of the appellant factory was never the argument taken before the lower authorities. In view of their specific averment in the Memorandum of Appeal, it is apparent that the Railway track is situated within the factory premises of M/s Mangalam Cement Ltd. and not in the factory premises of the Appellants. Mere fact that the Appellant factory is also owned by M/s Mangalam Cement Ltd., it cannot be claimed by them that the diesel locomotive engine is being used by them in their factory. Rule 57Q of the Central Excise Rules, 1944, at the relevant time, required for the availment of the Modvat credit of the duty paid on the capital goods, that the capital goods are used in the factory of the manufacturers. The benefit of Modvat credit will be available only if it can be established by the Appellants that the impugned capital goods were used in their factory and not in the factory premises of M/s Mangalam Cement Ltd. As per the definition of the factory under Section 2(e) of the Central Excise Act, 'the factory' means any premises including the precincts thereof. Certainly, any

premises of another factory cannot be treated as precincts of the Appellant factory. It has been held by the Tribunal in the case of CCE v. Birla Jute & Industries Limited, 1990 (46) E.L.T. 569 (T) that the licence is to be issued for the factory and not for the manufacturer.

The Tribunal in the said decision did not agree with the contention of the Revenue that in terms of Section 6 of the Central Excise Act read with Rule 174 of the Central Excise Rules, 1944, the Central Excise licence is granted to a manufacturer who is engaged in the manufacture and as the respondents are manufacturers already having L-4 licence, separate L-4 licence cannot be issued. In view of these facts, we hold that the Appellants have not succeeded in establishing that the diesel loco motive engine was used in their factory premises. Accordingly, the Modvat credit of the duty paid on diesel locomotive engine will not be available to them. We, therefore, reject the appeal.

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