

S.V. Electricals Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-26-2003

Reported in : (2003)(155)ELT534TriDel

Judge : K Usha, N T C.N.B., P Chacko

Appellant : S.V. Electricals Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. We have been called upon to decide on an issue referred by the Northern Bench (S) of this Tribunal in view of conflicting decisions on the issue by Two Member Benches. The issue is whether a plain Molybdenum wire used in the manufacture of Tungsten filament falling under Heading 85.39 of the Central Excise Tariff Schedule is an input eligible for Modvat credit under Rule 57A of the erstwhile Central Excise Rules, 1944 for the period December, 1996 to July, 1997.
2. The appellants were engaged in the manufacture of electric filaments viz. Tungsten filaments falling under the above Tariff Heading, during the above period of dispute. They used Molybdenum wire in the manufacture of Tungsten filament in the following manner :- Tungsten wire of the required size was wound tightly around a Molybdenum wire of predetermined size on a Primary Coiling Machine with the pitch requisitely adjusted. The coil so produced on the primary coiling machine was called primary coil. The primary coil was then converted into a secondary coil by coiling the primary coil around another thick Molybdenum wire.

The Molybdenum wires were then removed by treatment of the coil system with an acid mixture in which the Molybdenum wires dissolved leaving behind the coiled Tungsten filament which was ready for use in a lighting system.

3. The appellants took Modvat credit on Molybdenum wire as input under Rule 57A of the Central Excise Rules, 1944 to the extent of Rs. 2,88,355/- during December, 1996 to March, 1997 and to the extent of Rs. 2, 17,380/- during April to July, 97, totalling to Rs. 5,05,735/-.

Two show cause notices were issued in respect of the two periods, wherein the appellants were directed to show cause why the credit should not be disallowed on the ground that the Molybdenum wire was a consumable 'appliance' used for coiling of Tungsten wire and was not an eligible input under Rule 57A *ibid*. The notices also proposed to impose penalty on the party under Rule 173Q. The notices were contested. The original authority which adjudicated the dispute disallowed the Modvat credit and ordered recovery of the amount from the party under Rule 57-I and also imposed on them a penalty of Rs. 30,000/- under Rule 173Q. That authority held that the Molybdenum wire was an 'appliance' used for coiling Tungsten wire and could not, therefore, be treated an input for Modvat credit under Rule 57A. That authority relied on the decision of a 2-Member Bench of this Tribunal in *M/s. Apar Ltd. v. CCE* [1993 (67) E.L.T. 364], wherein it had been held that Molybdenum wire which was used as a mandrel for coiling Tungsten wire was an 'appliance' covered by the exclusion clause of Rule 57A and hence not eligible input for Modvat credit. The appeal preferred against the order of the original authority was rejected by the Commissioner (Appeals), who, following the decision of the Tribunal in *Jay Electric Company v. CCE, Surat* [2000 (118) E.L.T. 737], held that Molybdenum wire was not an input eligible for Modvat credit under Rule 57A. The aggrieved party, therefore, preferred appeal to this Tribunal and the Single Member Bench which heard the appeal passed the referral order.

Hence the matter before us.

5. Ld. Counsel for the appellants submitted that, in Circular No.267/63/91-CX. 8, dated 30-12-92, the Central Board of Excise and Customs had clarified that

Molybdenum wire used for the manufacture of Tungsten filament could not be considered as a tool or mould and was eligible for input-credit under Rule 57A as it could appropriately be described as a consumable used in relation to manufacture of Tungsten filament. The Board's circular was binding on the Revenue and/ therefore, it was not open to the respondent to argue against what had been laid down by the Board. The Counsel, in this connection, relied on the following decisions of the Supreme Court :-CCE v. Dhiren Chemical Industries Counsel submitted that, in the case of Jay Electric (supra), a wrong interpretation was placed on the term "tool" by the West Zonal Bench (WZB) of the Tribunal. In that case, Molybdenum wire was held to be a tool within the meaning of this term in the exclusion clause of Rule 57A. The Bench rejected the Board's interpretation and relied on its own earlier decision in Apar Ltd. (supra), wherein Molybdenum wire had been held to be an 'appliance' in the exclusion clause of Rule 57A. Counsel pointed out that the Board's Circular had not been noticed by the Bench in the Apar case. On the other hand, Counsel submitted, the South Zonal Bench (SZB) of the Tribunal, in the case of CCE, Madras v. Kalpana Lamps & Components Ltd. [1997 (91) E.L.T. 162], considered the Board's Circular and relied on the Tribunal's Larger Bench decision in Union Carbide India Ltd. v. CCE [1996 (86) E.L.T. 613] to hold that Molybdenum wire used for the manufacture of Tungsten filament did not come within the coverage of the term 'tool' and should be considered to have been used in or in relation to the manufacture of tungsten filament used in fluorescent tubes. The SZB accordingly held Molybdenum wire to be an eligible input under Rule 57A. Counsel also relied on the decision of the Tribunal's Northern Bench (DB) in ECE Industries Ltd. v. CCE [1998 (97) E.L.T. 146] wherein also the Board's Circular and the decision in Kalpana Lamps & Components (supra) had been relied on. He also endeavoured to draw a parallel between the Molybdenum wire involved in the instant case and the copper wire considered by the Larger Bench in Union Carbide India (supra). In the Union Carbide case, copper wire which was used to remove the excess molten metal (tin) resulting from the welding of tin sheets in the manufacture of tin containers and was disposed of as copper waste was held to have been used in relation to the manufacture of the tin containers and accordingly the copper wire was treated as an input under Rule 57A for Modvat credit. In his attempt to dislodge the

department's case that the Molybdenum wire was a tool or appliance within the meaning of these terms occurring in the exclusion clause of Rule 57A, Id. Counsel submitted that the Larger Bench in Union Carbide case had examined the meaning of these terms and held that copper wire which was used in the manufacture of metal containers was not an 'appliance', 'tool' or 'machine' covered by the exclusion clause of the rule.

6. Ld. SDR also referred to the Board's Circular and submitted that it was not binding on the Tribunal. He also referred to the meanings of tool, appliance, mandrel, etc., as given in various dictionaries of the English Language as well as in S.B. Sarkar's Book "Words and Phrases of Excise & Customs" 3rd Edition. The DR also referred to the meaning of the term 'tools' under Section 60(1)(b) of the Code of Civil Procedure as interpreted by the Madras High Court in the case of T.R. Punnavanam Pillai v. V. Muthuswami Achari [AIR 1962 Madras 444]. The DR's endeavour was avowedly to show that the terms 'tool' and 'appliance' were inter-changeable. In this connection, he also relied on the decision of the SZB of the Tribunal in Kerala Electric Lamps Works v.CCE [1996 (83) E.L.T. 209]. He then sought to bank on the Tribunal's WZB decision in Jay Electric (supra) and argued that the interpretation given by that Bench to the term 'tool' occurring in the exclusion clause of Rule 57A should be accepted in preference to the contrary interpretation given at earlier points of time by coordinate Benches of the Tribunal in Kalpana Lamps and Components (supra), ECE Industries (supra) and other cases.

7. We have examined the rival submissions and arguments. We note that, during a part of the period of dispute, Rule 57A, which provided for Modvat credit on specified goods (inputs) used in or in relation to the manufacture of specified final products, had an explanation in Sub-rule (1) thereof which contained both inclusive and exclusive clauses. The exclusionary clause relevant to the instant case is extracted below :- (1) Machines, machinery, plant, equipment, apparatus, tools, appliances or capital goods as defined in Rule 57Q used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products;" The above provision as such was in force up to 28-2-1997. It excluded the items specified therein from the category

of inputs eligible for the credit under the rule. This exclusionary provision was, through an amendment made w.e.f. 1-3-97, was transplanted in a modified form Rule 57A to Rule 57B. The relevant extract of Sub-rule (2) of Rule 57B containing the said provision is given below :- "(2) The manufacturer of the final products shall not be allowed to take credit of the duty paid on the following goods, namely :- (i) machines, machinery, equipment, apparatus, tools, appliances or capital goods as defined in Rule 57C (other than those used as component parts in the manufacture of final products), used for any purpose in the factory;" The period of dispute in the instant case is December, 1996 to July, 1997. During this entire period, a manufacturer of specified final products was not entitled to take Modvat credit of the duty paid on tools or appliances, whether in terms of the exclusion clause of the explanation to Rule 57A(1) (for the period up to 28-2-97) or in terms of Sub-rule (2) of Rule 57B (from 1-3-97 onwards). To be more precise, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products were not to be treated as inputs for Modvat purpose up to 28-2-97 and tools or appliances used for any purpose in the factory were not to be treated as modvatable inputs from 1-3-97. Noticeably, the substantive provision allowing credit of duty paid on inputs to a manufacturer of specified final products remained the same throughout the period of dispute. Accordingly, credit of any duty of excise paid on specified inputs used in or in relation to the manufacture of specified final products whether directly or indirectly and whether contained in the final product or not was allowed to the manufacturer of such final product, who could utilize the credit towards payment of duty of excise on the final product. Both sides have conceded this position. There is also no dispute of the fact that the Molybdenum wire was directly used in or in relation to the manufacture of Tungsten filament. The contentious issue in this case is whether the Molybdenum wire is hit by the exclusionary clause under Rule 57A(1) for the period up to 28-2-97 and by the bar of Sub-rule (2) of Rule 57B for the period from 1-3-97.

8. Ld. SDR has cited dictionaries and other references to show that 'tools' and 'appliances' are interchangeable terms and has relied on the Tribunal's decision in Apar Ltd. (supra) and Jay Electric (supra) to establish that the Molybdenum wire is within the coverage of 'tools' or 'appliances'. We are unable to be persuaded by

these arguments for a variety of reasons. Firstly, the CBEC had clearly ruled out Molybdenum wire being considered as a 'tool' to be hit by the exclusionary clause under Rule 57A. As, according to Id. SDR himself, the terms 'tools' and 'appliances' used in the exclusionary clause are interchangeable, the respondent can have no quarrel with the proposition that the Board's circular should also be taken to have ruled out the Molybdenum wire being considered as an 'appliance'. The instruction of the Board under Section STB of the Central Excise Act is binding on the Revenue as held by the Apex Court in the judgments cited by the Id. Counsel. The ruling given by the Constitution Bench of the Court in Dhiren Chemical Industries (supra) is particularly noteworthy in this context. The respondent, therefore, cannot be heard to say anything against the Board's interpretation of "tool" or against its view on whether the Molybdenum wire used for the manufacture of Tungsten filament was a tool or not. Secondly, the WZB of the Tribunal had no occasion to consider the Board's Circular in the case of Apar Ltd. (supra) relied on by the DR. Of course, in the case of Jay Electric (supra), the Bench did consider the Circular but did not accept the Board's view. The Bench concluded that Molybdenum wire fell within the excluded category of 'tools' under Rule 57A. We are unable to accept this decision of the WZB in Jay Electric (supra) which, in our considered view, was not rendered on the basis of a sound understanding of the view taken by the Board. Thirdly, in Jay Electric (supra), the Bench had before it a decision of the South Zonal Bench in CCE v. Vijil filament [Appeal Nos.

E/369 & 420/91] wherein the SZB had considered the Board's Circular and held that Molybdenum wire was an input eligible for Modvat credit. The WZB, however, did not at all consider the ratio of the coordinate Bench decision rendered in Vijil Filament case. Had it examined the ratio of Vijil filament decision and chosen not to follow it otherwise than on the strength of any better judicial authority, it would have eminently left the issue in the case to be decided upon by a Larger Bench.

Lastly, the view taken by the WZB (in Jay Electric case) that a mandrel which is consumed or destroyed in a single use can also be a tool is apparently contradictory to the view taken by this Tribunal's Larger Bench in the Union Carbide case (supra). The Larger Bench examined the meaning of 'tool',

'appliance' and other cognate terms in Para 21 of its judgment, which is reproduced below :- "21. We will examine the meaning and content of the various expressions used in exclusion Clause (i) of the Explanation to Rule 57A of the Rules, namely, "machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of final products." Various dictionaries indicate the following : McGraw-Hill Dictionary of Scientific and Technical Terms, IV Edition : Apparatus : A compound instrument designed to carry out a specific function. Appliance : A piece of equipment that draws electric or other energy and produces a desired work-saving or other result. Equipment: One or more assemblies capable of performing a complete function. Machine : A mechanical, electric or electronic device, a combination of rigid or resistant bodies having definite motion and capable of performing useful work. Machinery : A group or parts of Machines arranged to perform a useful function. Plant: The land, buildings and equipment used in an Industry. Tool : Any device, instrument or machine for the performance of an operation. Academic Press Dictionary of Science and Technology : Appliance : In general, any tool or machine that is used to carry out a specific task or produce a desired result. Machine ; Any device that transmits or modifies energy, an assembly of inter-related parts, each with a definite motion and separate function. Machinery : A group of parts or machines that are arranged to perform a particular operating or machining function. Plant: An engineering production facility, a factory, electric power station or the like. Tool: A portable and usually hand-held instrument that is used to increase the efficiency of a work effort. Apparatus : It means a collection or set of materials, implements or utensils for a given work, a complex device or machine or a set of tools, appliances, any complex instrument for a specific action or operation, machinery or mechanism, Appliance : is generally considered to be any household or office utensil, apparatus or instrument or machine that utilizes a power supply, especially electric current e.g. vacuum cleaners, refrigeration, toaster, air-conditioner. Machine : is a mechanical contrivance that modifies, utilizes or applies energy or force for a useful purpose or function. It includes every mechanical device or contrivance of mechanical powers and devices used to perform some functions or and produces a certain effect or result. Machinery : means machines in general or collectively;

also the working parts of a machine, engine or instrument; as the machinery of a watch. The means and appliances by which anything is kept in action or a desired result is obtained; a system of parts adopted to a purpose, Plant: is an all embracing term expressive of land, buildings, and the equipment of the business conducted on the premises.

Plant is an entity itself, wholly distinct from the land, buildings, machinery and appliances which compose it. Tool: An instrument of manual operation, like a human saw, plane, file or the like used to facilitate mechanical operations, as distinguished from an appliance moved by and regulated by machinery." In the Union Carbide case, it was contended by the Revenue that the Copper Wire which was used in the manufacture of tin containers was an 'appliance' within the exclusion clause of Rule 57A. The Larger Bench examined the Revenue's contention and held as under :- "Appliance" as generally understood is any tool or machine that is used to carry out a specific task or produce a desired result or an equipment that draws electric or other energy and produces a desired result. Copper wire used in the manufacture of metal containers is not a "tool" or "machine" that is used to carry out a specific function; nor is it an 'equipment' that draws any energy in producing a desired result. Hence it cannot be regarded as an "appliance"." In the instant case, Molybdenum wire was used as a mandrel for winding tungsten wire in the primary and secondary coiling stages of the manufacture of Tungsten filament. When the coiling was over, the system was put into an acid mixture which dissolved out the Molybdenum wire completely, leaving behind the Tungsten filament. The Molybdenum wire had no specific function to perform, nor was it an equipment that drew any electric or other energy to produce any desired result. Hence it did not satisfy the test of tool/machine/appliance laid down by the Larger Bench in Union Carbide.

9. The Molybdenum wire, admittedly, had a one-time use only. Mechanical and chemical forces -- the former when tungsten wire was tightly wound over it, and the latter when it was treated with acids later on -- destroyed its very physical existence as a wire thereby ruling out its further use. It is not the Revenue's case that the appellants regenerated the Molybdenum wire from its solution in acids and used it again as mandrel in the manufacture of another Tungsten filament. It is

difficult for us to conceive any such thing (which is wholly consumed or destroyed in use) as a tool or appliance. If the copper wire which was used in the manufacture of tin containers and became copper waste incapable of being used again in such manufacture could be held not to be a tool or appliance, the Molybdenum wire which disappeared irretrievably at the final stage of manufacture of a tungsten filament should a fortiori be held not to be a tool or appliance. We, therefore, endorse the view taken by the Board in its Circular dated 30-12-92 and hold that the Molybdenum wire used by the appellants in the manufacture of Tungsten filament was not a 'tool' or 'appliance' within the meaning of these expressions in the exclusion clause under Rule 57A or Rule STB as the case may be. We do not find it necessary to examine the terminology furnished by Id. SDR inasmuch as the meanings of all the terms were duly examined by the Tribunal's Larger Bench in Union Carbide case in the context of determining as to whether copper wire was a tool or machine within the exclusion ' clause of the Explanation to Rule 57A(1). The decision given by WZB in Jay Electric (supra) is erroneous, and so is the earlier decision in Apar Ltd. (supra). The decisions to the contrary rendered by the Northern Bench and the South Zonal Bench of the Tribunal will be endorsed.

10. Undisputedly, in this case, the substantive requirements under Rule 57A for Modvat credit stood satisfied inasmuch as (i) Molybdenum wire and Tungsten filament were specified goods as input and final product respectively, (ii) the Molybdenum wire was received under cover of valid duty-paying document in the appellants' factory, and (iii) the same was used in or in relation to the manufacture of the Tungsten filament. Having thus fulfilled the sine qua non for the credit under the Rule, the appellants will be entitled to the benefit in respect of the Molybdenum wire for the period of dispute. We would, once again, draw support to this decision from the judgment of the co-ordinate Larger Bench in Union Carbide wherein the status of eligible input was extended to Copper wire thus : Though it cannot be said that copper wire is used in the manufacture of metal container in the sense that it is raw material which enters into the finished product directly or indirectly, it can safely be said that copper wire is used in relation to manufacture of metal container since, without the use of the copper wire, the manufacturing process cannot be conducted. Copper wire is, therefore, "input" as contemplated in Rule

57A. It would therefore appear that the CBEC was quite right in holding that Molybdenum wire should be considered to have been used in relation to manufacture of tungsten filament. The contra interpretation in Apar and Jay Electric cases is overruled.

11. In the result, the impugned order of the Commissioner (Appeals), which was passed by following the Tribunal's decision in Jay Electric (supra) cannot be sustained and we set aside the same. The appeal stands allowed.

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