

Raj Cement Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-22-2003

Reported in : (2003)(88)ECC594

Judge : A T V.K., P Chacko

Appellant : Raj Cement

Respondent : Cce

Judgement :

1. The appellants are manufacturers of clinker and cement falling under Chapter 25 of the Central Excise Tariff Schedule. The appeal is against the denial, by the lower appellate authority, of modvat credit amounting to Rs. 1046,335 taken by the appellants during January to April 1998 under Rule 57-Q of the erstwhile Central Excise Rules, 1944.

Barring an amount of Rs. 2901, the entire credit was denied on the ground that the goods in respect of which the credit was taken were not eligible capital goods under Rule 57-Q. The credit of Rs. 2901 was denied on the ground that the same was taken on the strength of invalid documents. The break-up of the credit in question is given below: 2. Heard both the sides. The learned Counsel for the appellants submitted that the credit taken on hand tools was admissible to the appellants as the hand tools, which were used for setting and controlling the various machinery in their factory, were covered by the definition of "capital goods" under Rule 57-Q. ACSR was used for transmitting power supply to belt

conveyor which was used for transferring limestone from crusher to the factory and, therefore, modvat credit was admissible for the ACSR under Rule 57-Q. The Programmable Logic Controller (PLC), which was installed in the Central Control Room of the factory, regulated the operation of various machines and was, therefore, integral part of the plant. The item was, therefore, an eligible capital goods under Rule 57-Q. The Counsel, in this connection, relied on the Tribunal's decision in the cases of Isobars Ltd. v. CCE, 2000 (122) ELT 253 and CCE Jaipur v. JK Cement, 2000 (125) ELT 480. The Iron and Steel items had been used for 132 kV switchyard, back filter ESP and belt conveyor system, which were machineries used in the factory. The said items should be treated as component parts of the said machineries and modvat credit under Rule 57-Q was liable to be allowed in respect of those items. In this connection, the learned Counsel relied on a number of decisions cited below: Simbhaoli Sugar Mills Ltd. v. CCE, 2001 (135) ELT 1239 (Affirmed by the Supreme Court vide 2002 (139) ELT A-294) Monnet Ispat Ltd v. CCE, 2003 (86) ECC 544 (T) : 2003 (54) RLT 544 7. Final Order No A/740/2002-NB (SM) dated 11.6.2002 in A No E/725/2001 NB (SM) Rajasthan Spinning & Weaving Mills Ltd v. CCE In respect of the modvat credit of Rs. 2901, the Counsel submitted that the ground stated in the impugned order for denial of the credit was merely procedural. Denial of the credit for a procedural lapse was not justifiable when there was no dispute of the duty-paid nature of the goods or of the utilization of the goods in the manufacture of final products in the factory.

3. The learned DR sought to defend the order of the Commissioner (Appeals) on the strength of the findings recorded therein. In respect of Programmable Logic Controller, he submitted that the item was covered under Central Excise Tariff heading 8537, which had stood excluded from the category of eligible capital goods during the material period. He relied on the Board Circular /Order No. 49/3/97-CX dated 9.5.97 (File No. 154/8/94-CX.4). In respect of iron and steel items, the DR submitted that the said items had been used for erection and installation of various machineries in the appellants, factory and such items were not eligible capital goods under Rule 57-Q. He relied on the Tribunal's decision in Max G.B. Ltd v. CCE, Chandigarh, 2002 (53) RLT 922.

4. We have examined the submissions. The hand tools in respect of which modvat credit of Rs. 17,882 was taken by the appellants were, admittedly, used for the maintenance of machinery. These items were not used for the manufacture of final products. All these items were received in the factory prior to 1.9.96. It was (admittedly) only with effect from 1.9.96 that such tools were included in the category of eligible capital goods under Rule 57-Q by an amendment of the rule. The amendment had no retrospective effect. The learned Commissioner (Appeals) has rightly found so, legitimately drawing support from the decision of the Tribunal's larger Bench in CCE Indore v. Surya Roshini, 2001 (121) ELT 293. Thus, the correct position is that the hand tools which were admittedly received in the appellants' factory prior to 1.9.96 were not eligible for modvat credit under Rule 57-Q. The ACSR was, admittedly, used for power supply to belt conveyor. The belt conveyor was admittedly used for transferring raw material to the factory from the crusher located away from it. It has been held by the Hon'ble Supreme Court in the case of Jaypee Rewa Cement that capital goods installed outside factory are not eligible for modvat credit under Rule 57-Q. The ACSR used for supplying power to such capital goods also would belong to this category of ineligible capital goods. We affirm the relevant finding recorded by the learned Commissioner (Appeals). The Programmable Logic Controller (falling under Central Excise Tariff heading 84.71) was received in the appellants' factory after 23.7.96. The Commissioner (Appeal) has found that this item stood specifically excluded from the positive list of capital goods from 23.7.96. He has also recorded a finding that it is a machinery by itself and cannot be treated as a part of any other machinery. The credit taken on the item has been disallowed on this basis. We note that the programmable logic controller was received in the appellants' factory in October 1996. As per the definition of capital goods under Rule 57-Q at that time, the goods falling under heading 84.71 expressly stood excluded from the category of capital goods so defined. Counsel has relied on CBEC Order No. 49/3/97-CX dated 9.5.97 to show that the item was classifiable under heading 85.37 and not under heading 84.71.

As per the definition of capital goods under Rule 57-Q at the material time, all goods falling under Chapter 85 (other than those falling under certain specified headings in that chapter) were eligible for modvat credit. Heading 85.37 was not one of those specified headings and, therefore, goods falling under this heading

were within the definition of capital goods and eligible for Modvat credit. We find that this plea now raised by the Counsel had not been raised before any of the lower authorities. As a matter of fact, this plea is missing even in the memorandum of appeal before us. It appears that the classification of Programmer logic controller under heading 84.71 was accepted by the appellants throughout the proceedings. Hence, we reject the plea made by the appellants' counsel on the strength of the Board's order, and affirm the decision of the lower appellate authority in respect of Programmer Logic Controller. Various decisions of the Apex Court and this Tribunal have been cited by the learned Counsel in support of his submission that Modvat credit should have been allowed in respect of the iron and steel items falling under heading 73.08.

These items were received in the appellants factory on various dates.

The Commissioner (Appeals) denied the credit, relying on various decisions of the tribunal. The Counsel has not contested the applicability of those decisions. On the other hand, he has relied on certain other decisions before us. In the case of Simbhaoli Sugar Ltd., modvat credit was allowed under Rule 57-Q in respect of joints, channels, angles, etc. which were found to be components and accessories of machines and equipments. In the instant case, it has been claimed that the iron and steel items were identifiable parts and components of machines used in the manufacture of cement. But there is no evidence to show that the said items were identifiable components of any machine or equipment. In Global Sugar case, modvat credit was allowed under Rule 57-Q in respect of plates, shapes and sections, MS angles, MS channels, etc. We find that, in that case, the Bench followed two earlier decisions of the Tribunal and held that the said items were eligible capital goods. There is no finding in the cited case on the factual question whether the goods were actually components/parts of any machine or equipment. In the case of Rajasthan Spinning and Weaving Mills (Final Order No. A 740/2002 NB (SM) dated 11.6.2002), steel channels and sheets which were used in the fabrication of chimney for DG sets were held to be eligible capital goods under Rule 57-Q, The chimney was found to be an accessory of the DG sets and the steel channels and sheets used for fabricating the chimney were accordingly held to be eligible capital goods in terms of Sl. No. 5 of the Table annexed to Rule 57-

Q. Obviously, the period of dispute in the case of Rajasthan Spinning and Weaving Mills was after 1.3.97 and, under Rule 57-Q for the period, DG sets of Chapter 85 of the Central Excise Tariff Schedule were covered as capital goods under the Table. This decision is not applicable to the facts of the instant case inasmuch as nothing has been brought on record to show that the iron and steel items were components of machines and equipments and were not in the excluded category of capital goods under Rule 57-Q. We, therefore, do not find any fault with the order of the Commissioner (Appeals) in so far as the iron and steel items are concerned. The credit of Rs. 2901 has been denied by the Commissioner (Appeals) on the ground that the same was taken on the basis of invalid documents. It has been argued by the Counsel that the credit should not have been denied on the said ground as there was no dispute of the duty-paid nature of the goods or of the receipt of the goods in the appellants' factory and utilization thereof in the manufacture of final product. We find that the lower appellate authority has arrived at a reasoned finding by relying on the decision of the Tribunal's Larger Bench in CCE, New Delhi v. Avis Electronics Pvt. Ltd., 2000 (69) ECC 272 (LB): 2000 (117) ELT 571. A part of the modvat credit was taken on the strength of a photocopy of invoice. Another part was taken on the strength of an invoice in which the consignee was different from the appellant. The learned Commissioner (Appeals) has rightly denied these credits. Yet another part of the credit was taken on the basis of invoices which were not properly authenticated. We find that there is nothing on record to disprove the grounds on which the modvat credit of Rs. 2901 has been denied. The Larger Bench decision in Avis Electronics case has been aptly applied by the learned Commissioner (Appeals).

5. In view of our findings, we affirm the order of the Commissioner (Appeals) and reject the present appeal.

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