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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-04-2003

Reported in : (2003)(89)ECC650

Judge : A T V.K., P Chacko

Appellant : Aditya Cement

Respondent : Cce

Judgement :

1. In these 13 appeals, filed by M/s. Aditya Cement, the issue involved is eligibility to Modvat Credit under the provisions of Rule 57Q of the Central Excise Rules, 1944.

2. We heard Shri B.L. Narasimhan, learned Advocate for the Appellants, and Ms. Charul Baranwal, learned SDR for Revenue. The submissions made by them and our findings on them are recorded below.

3.1 Learned Advocate mentioned that the Commissioner (Appeals) have disallowed the Modvat Credit of the duty paid on the capital goods used in Mines on the ground that the basic principle of extending the Modvat Credit on capital goods is with reference to their use in the factory and that the mines are not part of the factory premises as the approved ground plan of factory premises does not include the mines. He submitted that the mines in the present matters are situated across the road and the factory and mines are divided only by a public road; that,

therefore the mines would fall under the category of precincts of the factory and accordingly the items used in the mines would also be eligible for credit; that mining of limestone and the use of the limestone in the manufacture of their final product, cement, is an integral process.

3.2 The learned SDR pointed out that admittedly the mines are not within the factory premises as these are away from the factory premises and cannot be considered as precincts; that the mines are not covered by the ground plan of factory. She relied upon the judgment of the Supreme Court in the case of Jaypee Rewa Cements v. CCE, 2001 (77) ECC 457 (SC) : 2001 (133) ELT 3 (SC).

3.3 We find substantial force in the submissions of the learned SDR that the mines are not covered within the factory premises as they are admittedly not adjacent to the factory. As per the provisions of Rule 57Q of the Central Excise Rules, 1944 at the relevant time (in the year 1995), the credit of the duty paid on the capital goods is available if such capital goods are used within the factory. This issue has been finally settled by the judgment of the Supreme Court in the case of Jaypee Rewa Cement, supra, where the Supreme Court has held that "in view of the provisions of Rule 57Q, the appellant is not entitled to any relief." Accordingly we uphold the findings in the impugned Order regarding disallowing the Modvat Credit on the capital goods used in the mines.

4.1 The learned Advocate mentioned that the Modvat Credit has been denied in respect of steel items such as Angles, channels, beams used in the fabrication of various machineries installed in the factory on the ground that these have been used for construction/fabrication work.

He submitted that the steel items in question are used as parts of various machineries installed in their factory and as supporting structures to them; that the Appellants have not claimed capital goods credit in respect of the steel material, about 95% of the total steel material purchased by them, which is used for the purpose of building construction; that it is only in respect of balance 5% of the steel materials where the same has been used as supporting structures for the various machineries. Reliance has been placed on the decision in the case of Global Sugar Ltd. v. CCE, Kanpur, 4.2 Countering the arguments, learned SDR

submitted that the steel items have been used as supporting structures of the machine and as such these are neither machine/machinery for producing or processing any goods or for bringing about any change in any substance for the manufacture of final products nor are they components, spare parts or accessories of such machine & machineries and are, therefore, not covered by the definition of the capital goods as given in Explantion 1 to Rule 57Q.4.3 We agree with the submissions made by the learned SDR. For being eligible to avail the capital goods credit, the goods must be capital goods as defined in Explanation 1 to Rule 57Q. It has been held by the Apex Court in CCE, Coimbatore v. Jawahar Mills, 2001 (77) ECC 1 (SC) : 2001 (132) ELT 3 (SC) that "if any of the items enumerated in Explanation 1(a) is used for any purpose mentioned therein for the manufacture of final products, it would satisfy the test of 'capital goods'." The Supreme Court also accepted the contention of the Additional Solicitor General that "uses will determine whether an item qualifies or not the requirement of Clause 1(a)." In the present matters the steel items are neither machine nor machinery nor they are components/spare parts/accessories of the machines or machineries.

These are providing support to the machines or machineries, such are not applicable capital goods as defined in Clause 1(a) of Explanation to Rule 57Q. Accordingly the Modvat Credit of the duty paid on these goods is not admissible to the appellants.

5.1 The learned Advocate contended that the Commissioner (Appeals) has denied the Modvat Credit on Railway Tracks materials; that the Railway Track materials are used for carrying limestone, coal and cement from their factory of production of cement; that the activity is integrally connected one having direct relation to the manufacture of cement; that these goods should be treated as plant or machinery handling raw materials and the final products; that without use of these Railway Tracks material, manufacture of cement is hardly possible. He relied upon the decision in the case of CCE, Guntur v. KCP Limited, 2002 (48) ELT 959 (T) wherein the portable truck loading unit used for transporting sugar from godown to loading point and from there to the vehicle was held to be eligible capital goods. The learned Advocate also relied upon the decision in the case of Chief

Commissioner (Admn) v. Visveswarayya Iron and Steel Ltd.,1993 (199) ITR 98 (Karri) wherein the Karnataka High Court treated Railway Siding as part of the plant.

Reliance has also been placed on the decision in the case of Commissioner Income Tax v. Birla Jute & Industries Limited, 2003 (260) ITR 55 (Cal).

5.2 Opposing the arguments, the learned SDR submitted that the Railway Track materials are used after the goods have been completely manufactured; that these goods are not taking part in producing for process of any goods or bringing any change in any substance for the manufacture of final products; that the decision of the Tribunal in the case of KCP Limited, relied upon, has been passed by a Single Member of the Tribunal whereas Division Bench of the Tribunal in the case of Jayaswals Neco Limited v. CCE, Raipur, Final Order No. A/27203-NB-C dated 30.4.2003 has disallowed the Modvat Credit in respect of Railway Track materials on the ground that these goods are not being used directly or indirectly for producing or processing of goods. She, further, submitted that the decisions in the case of Visveswarayya Iron & Steel Limited and Birla Jute & Industries Limited were under the provisions of Income Tax Act regarding allowing investment allowance.

Definition of capital goods as given in Rule 57Q is different and has to be interpreted accordingly.

5.3 Railway Track material does not fall within definition of capital goods as given in Explanation 1(a) to Rule 57Q. Railway track material is neither machine, machinery, plant, equipment, apparatus, tools or appliances which is used for producing or processing of any goods or for bringing about any change in any substance. Applying the ratio of the Supreme Court judgment in the case of Jawahar Mills Limited, supra, Railway Track materials cannot be considered to be capital goods at all. The Tribunal has also expressed the similar views in the case of Jayaswals Neco Limited. The learned SDK has rightly pointed out that the decision of the Karnataka High Court in the case cited by the learned Advocate was considering the Income Tax Act provisions for investment allowance under Section 32A(1) of the Income Tax Act. Those decisions are not applicable as the

word plant has been differently defined in the Income Tax Act as it includes vehicle also among other things used for the purpose of business or profession. Accordingly, we do not find any infirmity in disallowing the Modvat Credit in respect of Railway Track materials.

6.1 The learned Advocate, further, mentioned that the Commissioner (Appeals) has also disallowed the Modvat Credit in respect of Wagon/Truck Tippler/Locomotive Engine specifically allowed by the Tribunal in the case of CCE v. Vikaram Cement, 2000 (123) ELT 628 (T); that the said decision has been affirmed by the Supreme Court as appeal filed by Revenue has been dismissed as reported in 2002 (145) ELT A68.

Reliance has also been placed on the decision in the case of Malabar Cements Limited v. CCE, Cochin, 2002 (149) ELT 751 (T) wherein Dumpers have been held to be capital goods being material handling equipments.

The learned SDR reiterated the findings as contained in the impugned order to the fact that the vehicle cannot be a machine/machinery, etc.

within meaning given in Rule 57Q.6.2 In view of the fact that the impugned goods are used as material handling equipments and following the decisions in the case of Vikram Cement and Malabar Cements Limited, we hold that these are capital goods eligible for Modvat Credit. Accordingly the appeals in respect of these items are allowed.

7.1 The learned Advocate mentioned that the Commissioner (Appeals) has also disallowed the Modvat Credit in respect of Drilling machines/Welding machines and Lubricants used in workshop for general maintenance purpose on the ground that these cannot be considered items integrally connected with the manufacturing process of cement. The learned Advocate submitted that the workshop in a cement factory is an essential facility which provide for carrying out routine repairs so that the manufacturing process is carried out in a smooth way and any obstruction caused by any machine or machinery item needs to be removed only by the items in question used in the workshop. He relied upon the decision of the Tribunal in the case of Jawahar Mills Limited v. CCE, Coimbatore, 1999 (108) ELT

47 (T) wherein the Tribunal in para 40 of its decision has held that Modvat Credit in respect of Control Panel, Cable, Welding Electrodes, etc. is available to the appellants. The learned SDR reiterated, the findings as contained in the impugned Order.

7.2 It has not been disputed by Revenue that the items used in workshop are meant for repairing the machine or machinery which is used for manufacture of final products of the appellants, namely, cement.

Accordingly, it cannot be claimed by Revenue that these machines used in the workshop are not used in producing or processing of the final products as these are used to maintain the machine which is involved in the production of cement. Accordingly the benefit of Modvat Credit is available to these items under Rule 57Q.8.1 The learned Advocate also submitted that the Commissioner (Appeals) has disallowed the Modvat Credit in respect of Telecommunication equipments on the ground that these items are used for telecommunication purpose and could not be considered items integrally connected with manufacturing process of cement nor they fall in any of the category specified in Rule 57Q. He mentioned that these are not normal Telecommunication Equipments but these are telecommunication equipments used within factory at various places for effective monitoring of the functioning of the machines, hence these would be eligible under Rule 57Q.8.2 We do not find any force in the submissions of the learned Advocate that these Telecommunication equipments are capital goods within the meaning of capital goods as given in Explanation to Rule 57Q. As explained by him these are used within the factory for monitoring the functioning of the machines. It is thus apparent that these are used for the purpose of telecommunication and accordingly cannot be regarded as machine, machinery, equipment, apparatus, etc. which are used for producing or processing any goods for bringing about any change in any substance for the manufacture of final products. We, therefore, hold that the Modvat Credit is not available in respect of Telecommunication equipments.

9.1 Finally learned Advocate submitted that there is quantification error inasmuch as an amount of Rs. 18,38,687 disallowed in Appeal No.E/2417/02-NB has already been disallowed in Appeal No. E/2414/02-NB.He, further, submitted that

similar amount of Rs. 18,75,553 has been disallowed in two Appeals namely, Appeal No. E/2416/02-NB and E/2422/02-NB. We remand this aspect also to the Adjudicating Authority for verification and passing the appropriate Orders after hearing the Appellants.

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