

Grasim Industries Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-08-2003

Reported in : (2004)(164)ELT348TriDel

Judge : S Kang, a T V.K.

Appellant : Grasim Industries Limited

Respondent : Cce

Judgement :

1. The issue involved in this appeal, filed by M/s. Grasim Industries Limited, is whether modvat Credit of the duty paid on components of power plant is admissible to them under Rule 57Q of the Central Excise Rules, 1944.

2. Shri V. Shridharan, learned Advocate, submitted that the Appellants manufacture, inter alia, caustic soda lye for the manufacture of which continuous supply of power is a vital requirement; that accordingly in 1994-95, they received a number of duty paid components of power plant and brought into existence a complete power plant in its factory with the assistance of M/s. Bhel; that the Commissioner under the impugned order, has disallowed the Modvat credit of the duty taken on the components of power plant on the ground that the goods used for generation of electricity in the power plant cannot be said to be used for producing or processing or for bringing about any change in any substance for the manufacture of final products and as such the components of power plant are not covered by the definition of capital goods prior to 16.3.1995; that the

Commissioner has also held that they had availed the credit prior to filing declaration as required under Rule 57T (1) of the Rules.

3. The learned Advocate, further, submitted that the appellants had filed a general declaration on 1.3.94 declaring machines, machinery, etc. used in the factory as capital goods; that in the declaration they had also declared caustic soda lye, liquid chlorine and hydro chloric acid as final products; that the Appellants had filed another declaration on 29.10.194 specifically mentioning generating set and parts thereof as capital good; that this declaration squarely covers all the items received by them; that in any event, they had filed declaration dated 25.4.95. which covered all the item in question; that in view of the decision of Larger Bench of the Tribunal in the case of Kamakhya Steels Limited Vs. CCE, 2000 (121) ELT 247 (T) and in JBM Tools Limited vs. CCE, 2002 (144) ELT 561 (T), credit cannot be denied on account of delay in filling the declaration once the Department is satisfied about the substantive compliance of the Modvat Procedure.

4. The learned Counsel also mentioned that the finding of the Commissioner for denying the Modvat credit to the effect that generation of electricity cannot be said to be used for producing or processing the final product is contrary to the various decisions of the Tribunal; that the Larger Bench of the Tribunal in Ballarpur Industries Limited Vs. CCE, Belgaum, 2000 (116) ELT 12 (T-LB) has held that the inputs used for generation of electricity should be treated as inputs used in or in relation to the manufacture of the final products; that on the same analogy, capital goods used for generation of electricity should also be treated as used for producing or processing or for bringing about any change in any substance for the manufacture of final products; that in the following decisions, the Tribunal has extended the benefit of capital goods credit to components of D.G. Sets, even prior to 16.3.1995 - He also relied upon the decision in the case of CCE, Trichy Vs. Trichy Distilleries & Chemicals Ltd. 2002 (102) ECR 75 (T). The Tribunal has referred to the Order dated 29.1.2000 passed by the Madras High Court in Reference case No. 2/98 holding that the components of D.G. Set would also be covered by clause (c) of Explanation to Rule 57Q prior to 16.3.1995.

5. He finally submitted that the fact that electricity is not specified in the Tariff does not make any difference, since electricity is further used in the manufacture of dutiable final products, specified in Rule 57Q; that as such parts of power generation plant are used in the manufacture of dutiable final product and accordingly the parts satisfy the conditions mentioned in Rule 57Q of the Central Excise Rules; that the Appellants are not claiming Modvat Credit in terms of provisions of Rule 57R (2); that it has been held by the Larger Bench of the Tribunal in Ballarpur Industries that "Rule 57D(2) is required to be fulfilled only by a person who wants to claim benefit under that Rule and if any assessee can otherwise establish that MODVAT credit is available according to the other provisions of the rules, he cannot be denied credit on the ground of non-fulfilment of the conditions of Rule 57D (2)" that the similar vies were expressed by the Tribunal in the case of German Remedies Limited Vs. CCE, Goa, 2002 (144) ELT 606 (T).

6. Countering the arguments, Shri D.N. Choudhary, learned SDR, submitted that Rule 57R (2) specifically provided that credit of the duty allowed in respect of any capital goods shall not be denied or varied on the ground that any intermediate products have come into existence during the course of manufacture of the final product and that such intermediate products are for the time being exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate do of duty; that proviso to said sub-rule further provides that "Such intermediate products are specited as final products in annexure to Rule 57Q." He contended that components of power plant are assembled to bring into existence of power plant which generates electricity which is not specified as final product in Annexure to Rule 57R; that accordingly proviso to sub-rule (2) of Rule 57R bars the availment of credit of duty paid in respect of components of power plant, electricity being non excisable goods; that only with effect from 16.3.95 a second proviso was added in sub-rule (2) which mentioned that credit of duty shall be allowed in respect of capital goods used for generation of electricity, used within the factory of production for manufacture of final product or for any other purpose; that this Proviso cannot be given retrospective effect as the Notification NO.11/95-CE, (N.T.) dated 1.3.95 did not contain any provision to that effect; that it has been held by the Supreme Court in the Income-Tax Officer Vs. M.C. Poonnoose, AIR

1970 S.C. 385 that " it is open to a sovereign legislature to enact laws which have retrospective operation.

The Courts will not, therefore, ascribe retrospectively to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature." Reliance has also been placed on the decision in the case of the Cannanore Spinning and Weaving Mills Limited Vs. Collector of Customs and Central Excise, 1978 ELT J-375 (SC) wherein it has been held by the Supreme Court that the retrospective effect if proposed to be given in any Notification will be beyond the powers of rule making authority.

We have considered the submissions of both sides. Regarding delay in filing declaration for availing MODVAT Credit of the duty paid on capital goods under Rule 57T (1) of the Central Excise Rules, 1944, we observe that the Appellants initially on 1.3.94 filed a very general declaration declaring all machines, machinery, etc. as capital goods for the manufacture of their final products caustic soda lye/flakes, liquid chlorine and hydrochloric acid. Subsequently, they filed two more declarations giving detailed descriptions of the capital goods.

The learned advocate has referred to the amendment in Rule 57(T) by Notification No. 7/99-CE (NT), dated 9.2.99. New sub-rule (13) inserted in Rule 57 (T) provided that credit shall not be denied on the ground that "the declaration filed under sub-rule (1) does not contain all the details required to be contained herein or the manufacturer fails to comply with any other requirements under sub-rule (1)." Proviso to said sub-rule (13) further provided that the Assistant Commissioner, however, should be satisfied "that duty due on the capital goods have been paid and such capital goods have actually been used or are to be used in the manufacture of final products." 8. The Central Board of Excise & customs has issued a circular No.441/7/99-Cx dated 23.2.99 clarifying that Notification No. 7/99-CE (N.T.) "has been issued to insert Sub-rule (11) in Rule 57G and sub-rule (13) in Rule 57T of the Central Excise Rules, 1944 so as to empower the Assistant Commissioner of Central Excise having jurisdiction over the factory of the manufacturer to allow credit of duty paid on inputs/capital goods, ignoring minor procedural lapse in filing the declaration or in the invoice/document based on which

credit is to be taken." This amendment in Rules and Board's Circular came up for consideration of the Larger Bench of the Tribunal in the case of Kamakhya Steels (P) Ltd. Vs. CCE, Meerut, 2000 (121) ELT 247 (T-LB) wherein the Tribunal in a case where declaration had not been filed agreed with the learned Advocate that "it as specified in the Circular that guidelines are applicable to the pending cases and the pending cases are to be disposed of accordingly" and matter was remanded to the Jurisdictional Assistant Commissioner to examine the admissibility of MODVAT Credit. Therefore, in the present matter also, the MODVAT Credit cannot be denied on the ground of filing the detailed MODVAT declaration late as there is no dispute about the receipt of the impugned goods in the factory.

9. This brings us to the second question as to whether MODVAT Credit is available on parts/components of power plant prior to 16.6.1995 in view of the definition of "Capital Goods" in Explanation (1) to Rule 57Q and in view of provisions of Rule 57R (2) of the Central Excise Rules. Rule 57Q (1) provides for the credit of specified duty paid on the capital goods used by the manufacturer in his factory. It is not disputed that the components are used to assemble power plant and the electricity generated therein is used for manufacturing the final products of the Appellant. The finding of the commissioner in the impugned order that the power plant, prior to 16.3.95, was not covered by the definition of capital goods as the same cannot be said to be used either for producing or processing or for bringing about any change in any substance for the manufacture of the final products has to be discarded in view of the decision of the Larger Bench of the Tribunal in the case of Jawahar Mills Ltd. Vs. CCE, 1998 (108) ELT 47 (T-LB) and the judgement of the Supreme Court in the case of CE Vs. Jawahar Mills Ltd, 2000 (132) ELT 3 (SC). The Supreme Court has held that the definition of "capital goods" is very wide. Capital goods can be machines, machinery, plant, equipment, apparatus, tools or appliances. Any of these goods if used for producing or processing of any goods or for bringing about any change in the substance for manufacture of final products would be "capital goods" and, therefore, qualify for availing modvat Credit. Per Clause (b), the components, spare parts and accessories of the goods mentioned in clause (a) used for the purposes enumerated therein would also be capital goods and qualify for Modvat Credit

entitlement.

The Larger Bench of the Tribunal in Jawahar Mills case has held that "where these three different and distinct expressions are used, it will not be possible and correct to construe the expression 'used for producing of any goods for the manufacture of final product' as synonymous with 'used for bringing about any change in any substance for the manufacture of the final product. Similarly, it would not be correct to construe the expression 'used for processing of any goods for the manufacture of the final product' as synonymous with "used for bringing about any change in any substance for the manufacture of the final product.

The Larger Bench of the Tribunal has then held that the expression 'used for producing or processing' "would not, to use the language of the Supreme Court in J.K. Cotton Spinning & Weaving Mills Co. Pvt. Ltd. be limited to ingredients or components used in the process directly and actually needed for turning out or creation for the goods." The Tribunal did not accept the contention of the Revenue that in terms of Explanation 1 (a), the item must have a direct nexus with the final product being produced as the said contention is "contrary to the decision of the Supreme Court in the Indian Copper Corporation case and J.K. Cotton Spinning & Weaving Mills Co. Pvt. Ltd. case." The Larger Bench of the Tribunal then finally observed that "In the light of above, the issue as to whether the amendment effected in Notification No. 11/95, dated 16.3.1995 under Rule 57Q and Notification No. 14/96-CE, dated 23.7.96 is retrospective, becomes academic. We have to decide the matter according to the language of the provision as it stood at the material time. We are required to examine Explanation 1(a) as it stood in the contention of the assesseees that the items which are recognised as eligible to capital goods credit by Notification 14/96 are items covered by Explanation 1(a) and it cannot be contended by the Revenue that these items are not covered by the Headings mentioned in Notification 14/96 r that the items are not capital goods within the meaning of Explanation 1(a) under Rule 57Q as it stood during the relevant period." 10. The Commissioner has relied upon the decision in CCE Vs.

Shanmugaraja Spinning Mills P. Ltd. 1997 (89) ELT 84 (T) which decision was not found to be a proper view by the Larger Bench in Jawahar Mills Case.

11. The Larger Bench of five Members of the Tribunal in the case of CCE Vs. Surya Roshni Limited, 2001 (128) ELT 293 (T-LB) has held that "the various items, which were included under clauses (d) and (e), if satisfy any one of the three conditions prior to 16.3.1995, they would have been entitled to the Modvat Credit. By the specific inclusion in the notification, which came into force on 16.3.1995, the various items included in clauses (d) and (e) need not satisfy any of the above mentioned three conditions with effect from that date." Applying the test laid down by both Larger Bench of the Tribunal and the Supreme Court in Jawahar Mills Limited it cannot be claimed by Revenue that the power plant does not take part in producing or processing or bringing about any change in any substance for the manufacture of the final products manufactured by the Appellants in the present matter. As the power plant satisfy the criteria mentioned in Explanation 1(a) of the Rule 57Q, it is the capital goods and the parts/components brought in by the Appellants to assemble power plant will be eligible capital goods. the bar of sub-rule (2) of Rule 57R will not be applicable in the present matter as the components/parts are used to assemble the power plant which is an eligible capital goods. The Electricity is generated by the power plant to produce or process final products of the Appellants. The use of the components/parts of the power plant is to be treated as used for producing or processing of the final products. We, therefore, set aside the impugned Order and allow the appeal.

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