

G.S.L. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-24-2003

Reported in : (2004)(93)ECC195

Judge : J Balasundaram, A M Moheb

Appellant : G.S.L.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant is a manufacturer of Synthetic Blend Spun Yarn. A show cause notice was issued to the appellants asking them to explain why the credit on capital goods availed during the period September 1994 to October 1994 to the tune of Rs. 57,37,248/- should not be denied under Rule 57U of Central Excise Rules and why penalty should not be imposed on them. In the impugned order the Commissioner denied the credit taken on certain inputs and allowed the rest. He disallowed the credit of Rs. 14,94,596/-. M/s. G.S.L, the appellants were aggrieved by this order.

The Revenue also filed an appeal against the same order on the ground that the Commissioner should not have allowed credit of Rs. 42,652/-.

Both the appeals are taken up for disposal.

2. In the impugned order the Commissioner did not allow credit on the following inputs on the grounds stated against each SL.No.1 M.S.Plates/Bars Tor Steel,

Cement , Construction material Sheets etc.

construction of the 2.

PVC Eliminators Used only in protecting plant 3.

Battery Charger Not a part of the 4.

Cables Are used for bringing 5.

Decofoam Is not capital goods 6.

BOPP Self Adhesive Tape Used in the packing of 7.

Compressor Included in the category of the 4. We observe that the Commissioner has rightly denied credit on item at SL. No. 1 above. The appellants' argument that capital goods credit can be allowed on M.S. Plates, Bars etc. (Serial No. 1 above) in the light of Tribunal's decision in the case of Simbhaoli Sugar Mills Ltd. v. Commissioner of Central Excise [2001 (135) ELT 1239 (Tri.Del.)] is not acceptable as the facts contained in that case are different. The Commissioner has clearly brought out that goods in SL No. 1 above consisted of materials used in the construction of the plant and or not part and parcel of the machinery itself. These materials did not directly or indirectly contribute to the production of goods. We hold that the modvat credit has been rightly denied on these items. In so far as items mentioned at Serial No. 2 to 7, we hold that the appellants are entitled for modvat credit on these goods as per the Tribunal's and Supreme Court's decisions in various cases listed below:- [a] Jawahar Mills Ltd. v. Commissioner of Central Excise [1999 (108) E.L.T. 47 (Tribunal)] Panchmahals Steels Ltd. v. Commissioner of Central Excise & Customs. Commissioner of Central Excise Coimbatore and Ors. v. Jawahar Mills Ltd. and Ors.

Following the ratio laid down in these pronouncements, we allow the credit taken on the items mentioned above.

4. The department in its appeal contends that the Commissioner should not have allowed modvat credit on indicator, PVC Eliminators and Switch Boards as the names themselves are suggestive of the fact that they do not fall within the

purview of Rule 57Q of the Central Excise Rules. It is the Department's further contention that the indicators have been covered under Rule 57Q only w.e.f. 16.3.1995 under Notification No.11/95 CE(NT) but the credit was taken earlier to the issuance of this notification. The further contention of the department is that the Commissioner should have imposed a higher penalty than Rs. 50,000/- as the credit availed wrongly amounts to Rs. 15,37,248/-.

5. Heard the Ld. Departmental Representative, we find that the issue whether modvat credit is admissible or not on the three items mentioned above is already covered by various decisions of the Tribunal's. It is now well settled that even prior to the issuance of notification No.11/95 modvat credit is available on indicators. The Department's appeal has therefore no merit. In so far as the imposition of penalty only to the tune of Rs. 50,000/- is concerned, we observe that penalties are not to be imposed in a mechanical manner. In the present case the appellants have rightly taken credit on several items except in the case of few items. Even in those cases where they are not eligible to the credit they seemed to have taken the same on the bonafide belief that they are entitled to do so.

6. The appeal of the assessee M/s. G.S.L. is allowed partly, on above terms- penalty is set aside.

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