Commissioner of C. Ex. Vs. U.P. State Sugar Corporation Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-04-2003

Reported in : (2004)(167)ELT45TriDel

Judge : P Chacko

Appellant : Commissioner of C. Ex.

Respondent : U.P. State Sugar Corporation Ltd.

Judgement :

1. This appeal of the Revenue is against the order of the Commissioner (Appeals) allowing Modvat credit of Rs. 36,010/- on capital goods to the respondents under Rule 57Q for the period May 1998. The appellants are engaged in the manufacture of VP sugar and molasses. One of their capital goods is rotor assembly. There is no dispute in this case that rotor assembly is a part of the appellants sugar plant and hence eligible capital goods under Rule 57Q of the erstwhile Central Excise Rules, 1944 for Modvat purpose.

2. The brief facts of the present case are that the appellants had sent the above machine for repairs to a job worker; that the job worker repaired the machine by using fresh inputs and cleared the repaired/tested machine to the appellants under Rule 52A invoice on payment of excise duty of Rs. 36,010/-; that the appellants took credit of the said duty under Rule 57Q; that the Department challenged this action of the appellants by issuing a show cause notice; that the appellants contested the notice and eventually the Commissioner (Appeals) rejected the

Department's proposal for disallowing the Modvat credit taken on the machine on the basis of invoice dated 13-4-1998 issued by the job worker. Hence this appeal.

3. Heard both the sides. The learned SDR refers to the grounds of appeal and submits that Modvat credit under Rule 57Q was admissible only in respect the duty paid by the job worker on the new inputs used in the machine and not on the entire amount of duty paid under the relevant invoice. According to the SDR, on this basis, the respondents were entitled to take Modvat credit of only Rs. 1040/- being the duty paid at the rate of 13% on the value of Rs. 8,000/-of the new diode plate used in the job work. The DR also refers to the Supreme Court's judgment in the case of CCE v. Jawahar Mills Ltd. [2001 (132) E.L.T. 3 (S.C.)] and submits that the judgment has been misapplied by the Commissioner (Appeals).

4. The learned Counsel for the respondents submits that, in an earlier case involving a similar set of facts, this Tribunal has allowed capital goods duty credit to a sugar manufacturer under Rule 57Q for the month of December, 1998 in respect of a machine which suffered duty at the end of job worker on the entire invoice value comprising the price of the machine and the job work charges. It is submitted that Modvat credit of the entire duty paid by job worker was allowed to the sugar manufacturer in that case. The order referred to by the Counsel has been placed on record. On a perusal of this order (Final Order No A/1005/2003-NB(S), dated 26-8-2003 [Doiwala Sugar Co. Ltd. v.Commissioner -2003 (162) E.L.T. 990 (Tribunal)] in Appeal No.E/983/2003 -NB(S), I find that the ratio of that decision is squarely applicable to the facts of the instant case. In that case, the job worker had cleared the repaired machine under Rule 52A invoice to the assessee on payment of appropriate duty at the rate of 13% on the total assessable value of Rs. 6.8 lakhs. The assessable value mentioned in the invoice included the original price of the machine and the job work charges. It was held by this Tribunal that credit of the duty paid by the job worker on the entire assessable value was available to the assessee. The instant case is no different. Therefore, there is no reason to interfere with the conclusion recorded in the impugned order by the Commissioner (Appeals).