Commissioner of Central Excise Vs. D.S.M. Sugar Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-2004

Reported in : (2005)(101)ECC488

Judge : A T V.K.

Appellant : Commissioner of Central Excise

Respondent : D.S.M. Sugar Mills Ltd.

Judgement :

1. In these two appeals - one filed by the Revenue and the other by M/s. D.S.M. Sugar Mills Ltd. against the common Order-in-Appeal, the issue relates to the availability of the Modvat credit.

2. We heard Shri Rajesh Kumar, learned Advocate for the assessee and Shri P.M. Rao, and Shri Bipin Verma, learned D.Rs. for the Revenue.

3. M/s. D.S.M. Sugar Mills Ltd. manufactured sugar and molasses and availed of the Modvat credit of the duty paid on capital goods under Rule 57Q of the Central Excise Rules, 1944. The Deputy Commissioner has disallowed the Modvat credit in respect of rubber sheet, extruded plates and strips and M.S. slates on the ground that the same were not capital goods as mentioned in Rule 57Q(1) of the Rules. The Commissioner (Appeals) has allowed the Modvat credit in respect of rubber sheet on the ground that it is used for preventing the leakage of steam and maintaining the steam in the pressure for manufacture of finished products relying

upon the decision of the Tribunal in the case of Modi Sugar Mills v. C.C.E., Meerut, 2002 (150) E.L.T. 241 (Tri.) = 2002 (49) RLT 62 (T). The Commissioner (Appeals) has also allowed the Modvat credit in respect of extruded strips and plates as the same are used as control panel which is used in D.C. motor. It is the contention of the Revenue that both these said items are neither parts nor accessories of capital goods and as such the Modvat credit cannot be allowed. The learned D.R. has also contended that as the assessee had claimed the Modvat credit on these goods treating them as capital goods they cannot now claim Modvat credit on these items as inputs. Reliance has been placed on the decision of the Larger Bench of the Tribunal in the case of C.C.E., Indore v. Surya Roshni Ltd., 2001 (128) E.L.T. 293 (T-LB).

4. After considering the submissions of both the sides, I observe that it has not been disputed by the Revenue that both rubber sheet and aluminium extruded strips and plates are used by the assessees in or in relation to the manufacture of their final products. Even if they are not capital goods, as per the definition given in Rule 57Q, these are inputs which are used in or in relation to the manufacture of the final products. The assessee will, therefore, be eligible to take the Modvat credit of the duty paid on these goods under Rule 57A of the Central Excise Rules. It has been held by the Larger Bench of the Tribunal in the case of Modi Rubber Ltd., 2000 (119) E.L.T. 197 (Tri. - LB) = 2000 (38) RLT 718 (T-LB) that the declaration filed by the assessee in terms of Rule 57Q of the Rules is sufficient for the purpose of extending credit under Rule 57A of the Central Excise Rules. The Larger Bench of the Tribunal in the case of Surya Roshni Ltd. (supra), has observed that those goods which are claimed as inputs cannot get the Modvat credit as capital goods. This does not mean that if any product has been wrongly termed as capital goods and it is used in or in relation to the manufacture of the final product, it cannot be termed as input.

I hold that the Modvat credit is available to the assessee in respect of rubber sheets and aluminium extruded strips and plates. Thus, the appeal, filed by the Revenue, is rejected.

5. The Commissioner (Appeals) has also disallowed the Modvat credit in respect of M.S. slates on the ground that M.S. slates are classifiable under Heading 84.31 of the Schedule to the Central Excise Tariff Act which is excluded from the definition of the capital goods. It has been held by the learned Advocate that M.S. slate is a part of bagasse feeder system and is used for carrying the bagasse for feeding in boiler and is handling equipment and these M.S. slates are used as part of bagasse feeding system known as bagasse feeder chain. The learned Advocate has contended that as part of capital goods, the Modvat credit on M.S. slates is available. On the other hand the Revenue has contended that it has not been proved by bringing any technical write-up or any other material that M.S. slate is a part of bagasse feeder system; that the assessee has only claimed that it is a part of the bagasse feeder system which is not sufficient for allowing the Modvat credit. I agree with the submissions made by the Revenue that the appellants have merely stated that bagasse feeding system moves on M.S. slates without bringing any evidence in support of their contention. It has not been disputed by the assessee that M.S. slates are classifiable under Heading 84.31 which is not covered by the definition of the capital goods as given in Rule 57Q of the Central Excise Rules at the relevant time. Accordingly, I reject the appeal filed by M/s. D.S.M. Sugar Mills Ltd.