

Commissioner of Central Excise Vs. Flex Chemical Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-03-2005

Reported in : (2005)(103)ECC273

Judge : S Kang, Vice, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Flex Chemical Ltd.

Judgement :

1. This is an Appeal filed by the Revenue against Order-in-Appeal No.221/03 dated 29.5.03 by which the Commissioner (Appeals) has allowed Modvat credit on the basis of original copy of invoice and on goods namely MS angles, steel Bars, shape and Sections, copper sheets and joints.

2. We heard Shri H.C. Verma. Learned Departmental Representative, and Shri K.K. Anand, learned Advocate. In respect of Modvat credit taken on the strength of original copy of invoices, it is the contention of the Revenue that the respondents had approached the Assistant Commissioner for permitting them to avail of the credit on the basis of original copy of invoice which has been rejected on 12.12.96 against which no Appeal has been filed. This is no force in the submissions of the learned Advocate of the respondents that this is not an appealable order. They had sought permission of the competent authority for taking the Modvat credit on the basis of original copy which has been rejected. On such a rejection in the facts and circumstances, they are not eligible to take the Modvat credit and as such the

order was an appealable order. As the competent authority has denied the permission to take the credit on the strength of original copy which has not been appealed against and which has not been set aside, the respondents are not eligible for the credit. The Revenue's Appeal on this count is allowed.

3. The respondents had taken the Modvat credit in respect of MS ingots, Steel bars, sheets and shapes etc. under Rule 57 Q of the Central Excise Rules, 1944. At the relevant time the Modvat credit on capital goods was available in respect of machines/machinery equipment plant, apparatus or parts and accessories thereof. The impugned goods are used as steel structures in the factory where the machines are erected. As such these are neither parts of the machines nor accessories. Learned Advocate for the respondent has relied upon a number of decision such as HEG Ltd. v.CCE, and CCE Tricky v. India Cement Ltd. 2004 (64) RLT 63 and Simbhaoli Sugar Mills Ltd. v. CCE, 2001 (135) ELT 1239.

Learned Advocate also mentioned that the decision in the case of Simbhaoli Sugar Mills has been confirmed by the Supreme Court as the SLP filed by the Department was dismissed. On the other hand. Learned Departmental representative has relied upon the decision in the case of CCE, Noida v. DSM Ltd., 2003 (162) ELT 987 (Tri) wherein the Modvat credit has been denied in respect of MS sheets, angles HR coils etc.

used for fabrication of steel structures. Reliance has also been placed on the decision in the case of Nava Bharat Ferro Alloys Ltd., 2004 (174) ELT 375 and Vivek Alloys Ltd. v. CCE, Trichy, 1998 (104) ELT 541.

It has not been disputed by the learned Advocate for the respondents that the impugned items for which Modvat credit is being sought, has been used for fabrication of structures. The definition of capital goods as given in Explanation of Rule 57Q is very specific. The Modvat credit is available either in respect of machines/machinery, plant equipment or parts and accessories thereof. There is no material show that these goods, channels, steel bars, shapes and sections, copper sheets and joints are parts and accessories of any machinery. As they did not fall within the definition of capital goods as given in Explanation to Rule 57Q, the Modvat credit is not available.

Accordingly, on this count also, the Appeal filed by the Revenue is allowed.

4. The Revenue has also filed the Appeal for imposition of penalty on the respondents. Taking into consideration, all the facts and circumstances of the case, as issue involved is of interpretation of Modvat Rules, no penalty is imposable on the Appellants. The Appeal is disposed on these terms.

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