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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-20-2005

Reported in : (2005)(191)ELT549Tri(Chennai)

Judge : P Chacko

Appellant : Thiru Arooran Sugars Ltd.

Respondent : Cce

Judgement :

1. The appellants are engaged in the manufacture of sugar. Molasses is their by-product, which is stored in steel tanks within the factory premises. These tanks were fabricated from M.S. Plates etc. During the period 1.10.1995 to 23.3.1996, they took capital goods credit on M.S.plates etc. used for fabrication of such storage tanks, amounting to Rs. 58,120/-. Appeal No. 14/2004 is against denial of this credit to them by the lower authorities. In January 1998 also, the party availed similar credits, amounting to Rs. 4,52,415.30 and Rs. 1,07,160/-.

Appeal Nos. 15/2004 and 13/2004 respectively are against denial of these credits by the lower authorities.

2. Heard both sides. Ld. counsel for the appellants submits that the plates used in the fabrication of storage tanks were covered by Clause (d) of Explanation (1) to Rule 57Q(1) as the rule stood during the period October 1995 to March 1996 and thereafter. It is submitted that, as generation of molasses as a by-product is

inevitably incidental to the manufacture of sugar, its storage should be treated as part of the process of manufacture of sugar and, therefore, the storage tanks should be treated as part of the sugar plant. Ld. counsel also relies on the Board's Circular No. 276/110/96-TRU dt. 2.12.1996, wherein it was clarified that all parts, components and accessories which were to be used with capital goods of Clauses (a) to (c) of Explanation (1) to Rule 57Q and classifiable under any chapter heading were eligible for Modvat credit. Ld. counsel has also relied on a plethora of decisions, wherein, for various specified or unspecified periods, storage tanks were held to be eligible for capital goods credit. The following are the cited decisions:- 1. Commissioner v. Kalyani Seamless Tubes Ltd. 2004 (176) ELT 899 (Tri-Mumbai) 2. Commissioner v. Industrial Oxygen Co. Ltd. 2004 (175) ELT 907 (Tri-Bang.)Kissan Sahkari Chini Mills Ltd. v. Commissioner 2000 (124) ELT 295 (Tribunal)Sundaram Fasteners Ltd. v. Commissioner 2002 (53) RLT 584 (CEGAT-Che.)E.I.D. Parry (I) Ltd. v. Commissioner 2002 (150) ELT 765 (Tri-Chennai) : 2002 (105) ECR 10 (T)Commissioner v. Hindustan Zinc Ltd. 9. Tranvancore Cochin Chemicals Ltd. v. Commr. 2002 (147) ELT 992 (Tri-Bang.).

Ld. counsel also relies on the Apex Court's judgment rendered in the case of Commissioner v. Jawahar Mills Ltd. . Finally, ld. counsel has alternatively pleaded that, in the event of the subject goods being held ineligible for capital goods credit, the benefit of input duty credit should be allowed in terms of the Tribunal's larger bench decision in Commissioner v. Modi Rubber Ltd. and Ors. 2000 (38) RLT 718 (CEGAT-LB).

3. Ld. DR submits that, during the period of dispute, the admissibility of capital goods credit depended on the tariff classification of the goods. Storage tanks falling under Chapter 73 of the CETA Schedule were not specified for capital goods credit during that period. It was only w.e.f. 1.3.2001 that these goods were added to the list of eligible capital goods by Notification No. 6/2001-CE (NT). Before that date, it was not the intent of the legislative authority to allowed capital goods credit to storage tanks. Ld. DR has also endeavoured to distinguish the cases cited by counsel. He points out that, in those cases, the storage tanks were used for storage of inputs, intermediate products or processed material and not for storage of any finished product. Ld. DR also relies on the Tribunal's decision in

Bansali Bngineernig Polymers v. CCE 4. In her rejoinder, ld. counsel points out that, in the case of Bansali Engineering Polymers (supra), the period of dispute was April-May 1995, prior to the period of dispute involved in the instant case. It is also clarified that the period of dispute involved in the case of Kissan Sahkari Chini Mills Ltd. (supra) is more of less comparable to the one involved in the instant case.

5. I have carefully examined the records and considered the submissions. The goods in question are M.S. plates etc. used in the fabrication of storage tanks for the storage of molasses. The period of dispute can be split into two parts viz. (a) October 1995-March 1996 and (b) January 1998. For the first part of the period of dispute, the provision of law to be examined is Rule 57Q as amended by Notification No. 11/95-CE(NT) dt. 16.3.1995 and, for the second part of the period, Rule 57Q as recast w.e.f. 1.3.1997 would arise for consideration. It is significant to note that, till it was amended by Notification No.14/96-CE(NT) dated 23.7.1996, the Rule allowed capital goods credit on plant, equipments, machines, appliances, tools etc., which were "used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products" as also on components, spare parts and accessories of such plant, equipments, machines etc. used for the aforesaid purpose vide Clauses (a) and (b) of Explanation (1) to Rule 57Q(1) as the rule stood until 22.7.1996.

But the tanks used for storage of molasses (by-product) were not used for the aforesaid purpose, i.e., "for producing or processing of any goods or for bringing about any change in any substance" and hence they did not fall within the ambit of Clause (a). Consequently, the plates used in the fabrication of the tanks did not get covered under Clause (b) as they were not components, parts or accessories of any capital goods falling under Clause (a). The concept that the eligibility of capital goods for Modvat credit should normally depend on the nature of their use in the factory was totally done away with by Notification No.14/96-CE(NT) ibid which brought in a new concept. According to this new concept, the eligibility of capital goods for Modvat credit would normally depend on their tariff classification. This concept was more firmly built into Rule 57Q when the rule was recast w.e.f. 1.3.1997.

Chapter 73 of the CETA Schedule was not specified for capital goods credit under the Rule during the relevant period. Storage tanks were, admittedly, falling under Chapter 73 which did not figure in Rule 57Q during the period of dispute. It was only on 1.3.2001 that storage tanks, irrespective of their tariff classification, were added to the list of eligible capital goods under Rule 57Q. Therefore, during the period of dispute, storage tanks were not eligible for capital goods credit.

6. Ld. counsel has, particularly, relied on Clause (d) of the definition of "capital goods" under Explanation (1) to Rule 57Q(1).

This clause, which reads thus : "components, spares and accessories of the goods specified against items (a) to (c) above", formed part of the definition of "capital goods" under the said Explanation (1) inserted under Rule 57Q by Notification No. 14/96-CE(NT) dt. 23.7.1996. But the said 'explanation' was in place only till 28.2.1997. The intervening period (23.7.1996 to 28.2.1997) is not a part of the period of dispute in this case. Even otherwise, as already noted, Clause (d) is of no aid to the appellants' claim. It is also noticed that a similar clause was available under the 'explanation' inserted under Rule 57Q(1) by earlier Notification No. 11/95-CE(NT) and this Clause (No. ix) reads thus; "components, spares and accessories of the goods specified against items (i) to (viii) above." But the appellants have no case that the storage tanks in question were specified against items (i) to (viii).

Hence M.S. sheets etc. used in the fabrication of the tanks cannot be treated as components, spares and accessories of any goods specified against items (i) to (viii).

7. I shall now turn to the case law cited by ld. counsel and ld. DR. In the case of Kalyani Seamless Tubes Ltd. (supra), Industrial Oxygen Co.

Ltd. (supra), Kisan Sahkari Chini Mills (supra) and BID Parry (supra), the capital goods in question were storage tanks used for storing raw materials, intermediate products or processed material and not for storing any finished final product or by-product. In the case of Hindustan Zinc Ltd. (supra), the question was whether the benefit of Notification No. 67/95-CE was available to 'lead sheets' and 'wires' used

for replacing the lining of storage tanks which were used for storing Zinc sulphate solution (final product). Though no Modvat issue was involved in this case, it was incidentally held that "the process of manufacture will be completed only once the product is finally stored after the manufacture". Ld. counsel has laid emphasis on the finding of the Tribunal in Hindustan Zinc Ltd. (supra). But this decision does no(sic) improve the appellants' case inasmuch, as in their case, the question i(sic) whether M.S. plates etc. used in the fabrication of storage tanks ai(sic) components/parts/accessories of any 'capital goods' falling under any i(sic) the Tariff entries specified for capital goods credit under Rule 57(sic) during the period of dispute. Neither these goods nor the tank(sic) fabricated therefrom were falling under any of the tariff heading(sic) specified for Modvat purpose under Rule 57Q during the said perioi(sic) Admittedly, it was as late as on 1.3.2001 that the rule-making authorit(sic) included storage tanks (irrespective of tariff classification) in the categor(sic) of legible capital goods for Modvat purpose. Nobody has argued befor(sic) me that this amendment has retrospective effect. In the case (sic) Bhansali Engg. Polymers (supra) cited by the DR, the period of dispuu(sic) was April-May 1995 i.e. after Rule 57Q(1) was amended by Notifical(sic) No. 11/95-CE(NT). The Tribunal held that the materials used in(sic) fabrication of storage tanks were not eligible for Modvat credit und(sic) Rule 57Q(1). It is pertinent to note that those tanks were used for storing(sic) intermediate products. The ratio of the above decision must a fortiori,(sic) support the Revenue's objection to allowing capital goods credit to raw(sic) materials used in the fabrication of steel tanks for storage of finished products.

8. I have also examined the Board's circular relied on by ld. counsel.

This circular clarified Clause (d) of Explanation (1) inserted under Rule 57Q(1) by Notification No. 14/96-CE(NT). It was clarified that all parts, components and accessories which were to be used with capital goods of Clauses (a) to (c) of Explanation (1) to Rule 57Q and classifiable under any chapter heading were eligible for availment of Modvat credit. But, in the instant case, the tanks were not shown to be covered by any of the Clauses (a) to (c).

9. Ld. counsel has raised an alternative plea on the basis of the Tribunal's larger bench decision in the case of Modi Rubber Ltd. (supra) The basis of this plea is that the storage tanks are part of the sugar-manufacturing plant and hence the M.S. plates etc. used in the fabrication of these tanks should be held to have been used in or in relation to the manufacture of sugar. I cannot accept this factual pic(sic) which was not raised at the original level. Moreover, if the plea (sic) accepted, even measuring equipments used in connection with remove of molasses from the tanks can claim Modvat credit. The Modvat schen(sic) cannot be stretched like this.

10. In the result, the impugned orders disallowing Modvat credit c.(sic) M.S. plates etc. used in the fabrication of storage tanks for molasses during the period of dispute are upheld and these appeals are dismissed.

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