D.S.M. Sugar Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-05-2006

Reported in : (2006)(108)ECC420

Judge : M T K.C.

Appellant : D.S.M. Sugar

Respondent : Cce

Judgement :

1. These appeals are filed Revenue and by the assessee M/s. D.S.M.Sugar, Asmoli against the Order-in-appeal No. 100-CE/MRT-II/2003 dated 11.6.2003 passed by the Commissioner(appeals), Central Excise, Meerut-II.2. Revenue in their appeal have challenged the Order of the Commissioner(appeals) for allowing credit on Siliconised Butyl Rubber seat and Asbestos Rope AMP 31 on the ground that these are not covered by the definition of capital goods. They relied on the decision of the Tribunal in the case of Upper Ganges Sugar & Industries Ltd. v. CCE, Meerut, 3. M/s. D.S.M. Sugar has challenged the order of the Commissioner (appeals) denying the credit on Automatic Voltage regulator, CI Plumer Block, HRP Coil, Shape and section, H.R. Coil, A.M.P.32/121 and Transformer of 37.5 K.V.A.4. It was argued that the Deputy Commissioner of Central excise, Moradabad had verified the use/role of the capital goods. Submitted by the assessee and on the basis of which use of each of the item is as under:Automatic Voltage regular (Part of Turbine S.H.8406.00), It is to be used for voltage regulations at different load on 1.5 M.V. Turbine. By help of this turbine we run our

sugarhouse and crystallizer's stirrers to get our final product.

It is observed that regulation of voltage is the safety devise of the electrical appliances and have no role with the manufacturing process and thus not eligible capital goods.CI Plumber Block (Part of Mill C.H.84) These are used in fitting of open gearing of last mill TRPF to support the gear at both sides as required for it's fitting to run the unit. By help of this unit we run last mill for better juice extraction.HRP Coil (Component of motor S.H.8501.00) These coils are used in the base frame of Mill No. 3 D.C. Motor for running of Mill No. 3. By help of Mill No. 3, we again crush the sugar cane fibers after IInd Mill to increase sugar recovery.

It is used to make platform for mill No. 3 D.C. motor which drives IIIrd mill for crushing of sugar cane to get juice and finally obtain finished product i.e. sugar.HR Coil.

Component of mill Ch.84) It is used for making of headstocks of IIIrd mill. In these headstocks, mill rollers are fitted and run for cane crushing to get juice and finally sugar.A.M.P.32/AMP 121 (Component of Centrifugal machine S.H.84.21) It is used in proper fittings of transient heater in which we prepare the sugar mascuite as per requirement of temperature to run the Centrifugal machine to make sugar.

The party has not submitted any detail role/use of this transformers and the D.C. could not make any comments thereupon. In terms of explanation (1)(d)(vi) appended to Rule 57Q, Transformers (of power handling capacity exceeding 75 KVA) falling under heading 85.04, used in the factory of manufacturer is eligible capital goods irrespective of its ;role/use in the manufacturing process. As the impugned transformer is of 37.5 K.V.A. and thus not eligible capital goods.

5. It was argued that from use of these various items on which credit was denied by the Commissioner (appeals), it is clear that these are used within the plant and covered by the definition of the capital goods. These are either accessories of the machinery or being used as component of the machinery in the plant. Therefore, credit should not be denied on these items, 6. Regarding pleadings made by the Revenue on Siliconised Butyl rubber seat and Asbestos Rope AMP 31, it was pleaded that these are items which are used for preventing leakage in the pipes

and tubes of the sugar mill while sugarcane juice passes from one section of the factory to another. These are accessories of the pipes and tubes and are covered by the definition of the capital goods.

7. It was argued by the Revenue that various items like Automatic Voltage regulator, CI Plumber Block, HRP Coil, H.R. Coil, Shape and Section and AMP 32/121, are not taking part in the manufacture of the goods or processing of the goods. These are only structural material and are not eligible for modvat credit. Reliance was placed on the decision (i) in the case of Max G.B. Limited v. CCE, Chandigarh , where it was held that structural steel items viz. CHN channel, FLTS Plain plates, chequerred plates, JSTI Joists and Angles etc. used for erecting and fabrication of machinery being in the nature of building material, not eligible for modvat credit as capital goods under Rule 57Q., (ii) D.S.M. Sugar Mills Ltd. v. CCE, Kanpur reported in 2001 (135) ELT-654 where it was held that plates, channels, jloints, angles and section, H.H. Sheets, bars and rods are common civil construction items and in the normal course these items are used in the sugar plant as accessory to machine. Therefore, the factual position about their use would determine the eligibility of the modvat credit on these goods, (iii) Nava Bharat Ferro Alloys Ltd. v. CCE, Hyderabad columns of heavy fabricated structures and bracings, used for supporting columns of boiler, are in the nature of construction material and are not eligible for credit as capital goods. HR coils are general purpose items having multifarious uses and not covered by Clauses (a) to (d) of Explanation to Rule 57Q.8. On behalf of M/s. DSM Sugar, it was argued that in the case of D.S.M. Sugar (Kashipur) v. CCE, Meerut in Final Order No.A/420/98-NB(S) dated 21.4.98, it was held by the Tribunal that impugned items are used as raw material of new boiler, new turbine, molasses tank, etc., during the course of erection and fabrication thereof These have been used in the manufacture of machine or machinery which are used for producing or processing the goods. Once these materials are used for fabrication of the machine or machinery used; for producing oil processing the goods, it cannot be said that these are not component parts of the machine or machinery. In the case of CCE, Meerut-II v. D.S.M. Sugar Mills, a reference application was made to refer the following question to the High Court arising out of the Finial Order No. A/420/98-NB(S) dated 21.4.98.

Whether M.S. Rounds bars, M.S. Plates, H.R. Plates, Shapes and Sections etc. would fall under; the category of items given in explanation 1(b) of Rule 57Q of CER 1944 as it stood at the relevant period and would consequently become eligible for taking credit under modvat scheme on capital goods.

This reference application of the Revenue was dismissed by the Tribunal vide order dated 20.4.2001. Reliance was also placed on the following decisions:Global Sugar Ltd. v. CCE, Kanpur where it was held that "we note that so far as plates, shapes and sections are concerned, they are covered by the decision of this Tribunal in the case of D.S.M. Sugar, In regard to M.S. angles and M.S. channels, we find that allowance of Modvat credit on these items is squarely covered by the decision of the Tribunal in the case of New J.K. Cement Works.Simbhaoli Sugar Mils Ltd. v. CCE, Meerut 2001 (135) ELLT-1239 (Tri.-Delhi), where it was held that "if the items are used in the construction of the wall or any part of the plant structure as construction material that part has been disallowed. However, if the same material is used for raising structure to support the various machines parts of machine then they will be covered by the explanation to Rule 57Q. Plant no doubt has wide connotation and covers not only machine, machinery, equipment, parts, accessories and components but also the permanent structure in the form of walls etc. Therefore, reading down independent explanation given under Rule 57Q, we have to see whether the items claimed as components and accessories are actually components and accessories and other materials used in the manufacture of machine, machinery, equipment, apparatus, etc." This decision of the Tribunal was affirmed by the Supreme Court as reported in 2002 (139) ELT-A294.Modi Sugar Mills v. CCE, Meerut 2002 (150) ELT-241 (Tri.-Del.), where it was held that "the appellants are relying upon the decision of the Tribunal in the case of Rosa Sugar Works V. Commissioner of Central Excise Kanpur vide Final Order No. A/894/2000-NB(DB), dated 12.10.2000 in which the benefit of Modvat credit on Angles, plates, bars and rods, joists and H.R. sheets used in the expansion project and for repairing were allowed. The appeal filed by the Revenue against this order was dismissed by the Hon'ble Supreme Court vide Order dated 27th July, 2001 in the case of Commissioner of Central Excise, Coimbatore and Ors. V. Jawahar Mills Ltd. and Ors. in Civil Appeal Nos. 619-620 of 2000 . In view of the above decision of the Tribunal appellants are entitled for the benefit of credit in respect of goods in question."Gangeshwar- Ltd. v. CCE, Meerut 2002 (150) ELT-242 (Tri.-Delhi) where it was held that that "in the case of Rosa Sugar (Supra), plates, bars and rods used for repairing damaged parts of machinery, storage tank, boiler etc. have been held to be capital goods eligible for credit under Rule 57Q. In the case of J.K. Cement Works, M.S. Plates used for repairing kiln-shell were held to be eligible capital goods. In both the cited cases, the plates, bars or rods (sic), as the case may be, were used for replacement of damaged parts of one or the other machinery. The same is the situation in the instant case."Monnet Ispat Ltd. v. CCE, Raipur. , where it was held that iron and steel plates, channels, angles and other items used for replacement of damaged/worm out parts of Rotary kiln, are to be recorded as capital goods eligible for modvat credit.

Transformer of 11 KV voltage installed in appellant's factory after 16.3.95 being a part of H.T. sub-station located within factory premises, to be regarded as capital goods eligible for modvat credit under Clause (b) of Rule 57Q.CCE, Coimbatore v. Jawahar Mills Ltd. , where it was held that Capital goods can be machines, machinery, plant equipment, apparatus, tools or appliances. Any of these goods if used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product would be 'Capital goods' and, therefore, qualify for availing Modvat credit. As per Clause (b) the components, spare parts and accessories of the goods mentioned in Clause (a) used for the purposes enumerated therein would also be 'Capital goods' and qualify for Modvat credit entitlement. Clause (c) makes moulds and dies, generating sets and weigh bridges used in the factory of the manufacturers as capital goods and thus qualify for availing Modvat credit. The goods enumerated in Clause (c) needs not be used for producing the final product or used in the process of any goods for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer.

9. I have considered the submissions made by both the sides, I find that so far as the appeal of the Revenue is concerned, they have challenged allowing the modvat credit on Siliconised Butyl rubber seat and asbestos rope AMP 31. These items are used for making pipes and tubes leak proof. This issue has already been

decided in the case of M/s. DSM Sugar Mills, Asmoli in appeal No. E/2942/03-SM, in favour of the assessee. Therefore, the appeal of the Revenue is rejected.

10. M/s. DSM Sugar Mills, Asmoli have contested the denial of credit to them on the following items: It is used for voltage regulations at different loads on 1.5 M.V. Turbine. This turbine is used to run sugarhouse and crystal liter's stirrers to get the final product. The regulation of voltage is the safety devise of the electrical appliances. Therefore, it is helpful in getting the final product. It is an accessory of turbine and the modvat credit has to be allowed.

This is used in fitting of open gearing of last mill TRPF to support the gear at both sides to run the unit. By help of this unit last mill is run for better juice extraction. I therefore, find that this is eligible for modvat credit being a part and accessory of open gearing.

These are used in the base frame of Mill No. 3 D.C. Motor for running of Mill No. 3. Since these are used in base frame for D.C. Motor. They are only a construction material and not any part or component or accessory. It was held in the case of Nava Bharat Ferro Alloys Ltd. v. CCE, Hyderabad Tribunal that columns of heavy fabricated structures and bracings, used for supporting columns of boiler, are in the nature of construction material, and are not eligible for credit. Since these coils are used as supporting material for base frame, these cannot be considered as part or accessory or component. Therefore, the Commissioner (appeals) has correctly denied credit on this item.

It is used to make platform for mill No. 3 D.C. motor which drives IIIrd mill for crushing of sugar cane. I find that these items are also used to make platform and they are not part and accessory of the motor. Therefore, these are only construction material and are not eligible for modvat credit. Therefore, the It is used for making of headstocks of IIIrd mill. In these headstocks, mill rollers are fitted and run for cane crushing. I find that these coils are being used as accessory of the mill rollers and, therefore, the assessee is entitled for credit on this item.

These are used for proper fittings of transient heater in which sugar mascuite is prepared as per requirement of temperature to run the Centrifugal machine to make sugar. Since there are accessories of the Centrifugal machine, these are eligible for modvat credit.

The Commissioner (appeals) has given finding that the assessee has not submitted any detail role use of this transformers. I find that it is also not indicated whether this transformer is used within the plant or outside the plant.. In these circumstances, the Commissioner (appeals) has correctly denied the credit on this item.

11. In view of the above, the credit is allowed on Automatic Voltage regular, CI Plumer Block, H.R. Coil, AMP 32/AMP 121 and credit is denied on HRP Coil, Shape and Section and Transformer of 37.5 K.V.A.12. The appeal of the Revenue against the impugned order is rejected and the appeal of the assessee against the impugned order is partly allowed.