

Cce Vs. India Glycol Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-24-2006

Judge : M Ravindran

Appellant : Cce

Respondent : India Glycol Ltd.

Judgement :

1. This appeal is directed against the Order-in-Appcal dated 17.6.2003 wherein the Commissioner (Appeals) has allowed the appeal of the respondents.
2. The relevant facts that arise for consideration are that out of all the items in dispute one of the item i.e. Gas scrubbers and Spare packed bed for scrubber was imported by the respondents and they availed Modvat credit on the said items as capital goods. Show cause notice was issued to the respondents for denial credit on the said item on the ground that these are chemical media and would not fall under the category capital goods. The respondents contested the show cause notice on the ground that these chemical media are used for separation of impurities from the intake air and are installed in the D.G. sets.

The adjudicating authority confirmed the demand against which on appeal the Commissioner (Appeals) allowed the appeal of the respondents coming to the conclusion that the said product fall under Heading No. 84.21 and are covered under the capital goods. Hence this appeal by Revenue.

3. Learned D.R. points out that the goods which were imported by the respondents were chemical media and were falling under Chapter 38 and the Commissioner (Appeals) has erred in allowing the appeal based on the ground that the item is covered under Chapter 84. It is contended that the said inputs do not covered under Heading 84.21 and the credit is correctly sought to be denied to the respondents. She relies upon the Tribunal's decision in the case of Mark Auto Industries Ltd. v.CCE, Delhi 2004 (175) ELT 375 (Tri. -Del.) for the proposition that the respondents cannot now claim the different classification then the one when the goods were cleared.

4. Considered the submissions made by both sides and perused the record. I find that the department's ground of appeal specifically states that "the observation of Commissioner (Appeals) is not correct as Gas scrubber (for gas & spare packed bed for scrubber, purifier for gas (purafil scrubbed bed type & spare packed bed for scrubber) consists of three parts namely Purafil scrubber falling under C.S.H.8421.00, spare packed bed for scrubber falling under C.S.H, 8421.00 & chemical media (also known as spare packed bed for scrubber) falling under C.S.H. 38.23 of Central Excise Tariff Act, 1985. The first two items falling under C.S.H. 8421.00 involving credit of Rs. 107146.26 fall under the definition of capital goods as per explanation (l)(d)(i) of rule 57Q ibid. However the third item involving credit of Rs. 66219.45/- is not covered under capital goods category.

That Modvat credit on Spare packed bed for scrubber C.S.H. 38.23 as capital goods is not admissible as the said item is a chemical media for the separation of H₂S and allied sulphur impurities from intake Air. Thus has no relation to the manufacturing process for production of final product. The party has claimed this item as capital goods which is not correct. Therefore the credit on this item is not available in input category in view of the decision of Hon'ble Tribunal in the case of M/s. Stirya Roshni Ltd. (L.B).

5. From the above it can be seen that they are only disputing that the inputs do not fall under Heading 84.21 but falls under Chapter 38.23 and hence ineligible for credit as capital goods.

6. The definition of the capital goods during the relevant period was as under: (a) machines, machinery, plant, equipments, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products; (b) components, spare parts and accessories of the aforesaid machines, machinery, plant, equipment, apparatus, tools or appliances used for aforesaid purpose, and (c) moulds and dies, generating sets and weigh bridges used in the factory of the manufacturer.

(2) Notwithstanding anything contained in Sub-rule (1), no credit of specified duty paid on capital good shall be allowed if such duty has been paid on such capital goods before the 1st day of March, 1994.

Sub-clauses (d) and (e) were added to Explanation 1 of Rule 57Q vide Notfn. No. 11/95-CE(NT), dt. 16.3.95. The same also introduced Sub-rule 57Q(2). The same is reproduced below: (d) Following goods falling within the schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and used in the factory of the manufacturer - i) all goods falling under heading Nos. 84.02, 84.05, 84.06, 84.11, 84.12, 84.16, 84.17, 84.19, 84.21, 84.23, 84.25, 84.28, 84.80, 85.05, 85.35, 90.11, 90.13, 90.16, 90.17 & 90.24 to 90.31.

ii) auxiliary plants falling under heading No. 84.04 for use with boilers of heading No. 84.02; j iii) I.C. engines (other engines of motor vehicle) falling under heading No. 84.07 or 84.08 ; iv) Compressors (other than of a kind used for refrigerating and air conditioning applications) falling under heading No. 84.14; v) Electric generating sets (of output exceeding 75 KVA) falling under heading no. 85.02 vi) Transformers (of power handling capacity exceeding 75 KVA) falling under heading No. 85.04; viii) Goods (other than of a kind used for refrigerating and air conditioning applications) falling under heading Nos. 84.81 & 90.32; ix) Components, spares and accessories of the goods specified against item (i) to (viii) above; (e) goods specified in the table in the notification of the Government of India in the Ministry of Finance (Deptt. of Revenue) No. 68/89-Customs, dt. The 1st March 1989, & used in the factory of manufacturer.

From the above it can be seen that at Sri. No. (ix) components, spares, and accessories of the goods specified in item 1 to 8 were eligible for availment of

credit. I find from the order-in-original at para 13 the adjudicating authority has come to specific finding that "these are chemical media for separation of H₂S and allied sulphur impurities from intake air and are installed in DG sets." From the above finding it is very clear that the goods on which credit was availed was used along with DG set which were covered under the definition of capital goods, and hence, eligible for Modvat credit under Sri. No. (ix) as reproduced above. In view of the above, I do not find any merit in the case.

Therefore, appeal filed by the department is liable to be dismissed.

Appeal dismissed.

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