

Cce Vs. Surya Pharmaceuticals Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-04-2006

Judge : M Ravindran

Appellant : Cce

Respondent : Surya Pharmaceuticals Ltd.

Judgement :

1. The revenue is in appeal against the order-in-appeal dated 14.06.2004, which allowed the Modvat credit.
2. The relevant facts that arise for consideration are that the respondent availed the Modvat credit of the duty paid on the parts used in the manufacture of two chilling plants in their factory during the period July 1996 to March 2001. The lower authorities issued a show cause notice alleging that the credit is inadmissible as per Rule 57Q as was in existence during the relevant period. Respondent contested the show cause notice on the ground that the said chilling plant is a necessity for the manufacturing of their final products i.e. bulk drugs and without the chilling plant there would be no final products.

Adjudicating authority confirmed the demand on the ground that the parts of chilling plant were classified under chapter heading No. 84.15 and hence excluded by the rule itself. On an appeal the commissioner (Appeals) allowed the appeal.

3. Learned DR submits that the credit availed by the respondent is not in order in as much that the parts of chilling plant falls under chapter heading No. 84.15, which are specifically excluded from the definition of capital goods, howsoever they may be required by the respondent for the manufacture of their final products.

4. The learned advocate on the other hand submits that the order of the commissioner (appeals) is just and does not require any interference.

It is his submission that the revenue had not disputed the fact that the chilling plant is required for the manufacture of final products in their factory and if that is so then the credit should not be denied.

He relies upon the following case laws: Lumpin Laboratories Ltd. v. CCE & C., Indore (iii) Pharmasynth Formulations Ltd. v. CCE, New Delhi-1 ; CCE, Coimbatore v. Veejaylakshmi Engg. Works Ltd. ; Hindustan National Glass & Industries Ltd. v. CCE, New Delhi-III - 2002 (150) ELT 570 (Tri.-Del.) 5. Considered the submission made by both sides and perused the records. It is not disputed that the Modvat credit on capital goods is availed on the parts of chilling plant, that were erected in the factory of the respondent. It is also undisputed that the Modvat credit was availed during the period July 1996 March 2001 and that the parts were covered under chapter heading No. 84.15. During the relevant period provisions of Rule 57Q of the Central excise Rules, 1944 governed the eligibility of the Modvat credit on capital goods. It is necessary to refer to the said rule that I may read: 57Q. (1) The provisions of this section shall apply to finished excisable goods of the description specified in the Annexure below (hereinafter referred to as the "final products") for the purpose of allowing credit of specified duty paid on the capital goods used by the manufacturer in his factory and for utilising the credit so allowed towards payment of duty of excise leviable on the final products, or as the case may be, on such capital goods, if such capital goods have been permitted to be cleared under Rule 57S, subject to the provisions of this section and the conditions and restrictions as the Central Government may specify in this behalf: Provided that credit of specified duty in respect of any capital goods produced or manufactured - (a) in a free trade zone and used for the manufacture of final products in any other place in India; or (b) by a hundred per cent export-oriented

undertaking or by a unit in an Electronic Hardware Technology Park [or by a unit in Software Technology Parks] and used for the manufacture of final products in any place in India, shall be restricted to the extent of duty which is equal to the additional duty leviable on like goods under Section 3 of the Customs Tariff Act, 1975 (51 of 1975) equivalent to the duty of excise paid on such capital goods.

(1) "capital goods" means, following goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and used in the factory of the manufacturer, namely: (a) all goods falling under Chapter 84 (other than those falling under heading No. 84.07 to 84.09, Compressors falling under heading No. 84.14 and of a kind used in refrigerating and airconditioning appliances and machinery, heading or sub-heading Nos. 84.15, 84.18, 8422.10, 84.24, 84.29 to 84.37, 84.40, 84.50, 84.52, 84.69 to 84.74, 84.76, 84.78, expansion valves and solenoid valves falling under sub-heading No. 8481.10 of a kind used for refrigerating and airconditioning appliances and machinery); A plain reading of the said rule will indicate that the lawmakers intended to grant Modvat credit on the capital goods if those items were covered under Rule 57Q. It can be seen that the Explanation defines the capital goods, and Sub-clause (a) specifically excludes the eligibility of the Modvat Credit on the machinery falling under chapter heading No. 84.15. It would mean that even if any machinery is vital for the manufacture of final products, if it falls under the chapter heading No. 84.15, the assessee is precluded from availing the Modvat credit. In the case before me it is admitted fact that the parts on which Modvat credit is availed fall under chapter heading No. 84.15, hence the respondent is not eligible to avail the Modvat credit on such parts. I find that the case laws relied upon by the respondent's advocate were rendered during the period when the definition of capital goods under Rule 57Q was different and was for the period prior to July 1996. To my mind, the exclusion of the specific heading from the definition of capital goods debars the respondent from availing the Modvat credit on the parts of chilling plant falling under chapter heading No. 84.15, howsoever it may be required for the manufacture of final products.

6. Accordingly, the impugned order is liable to be set aside and I do so. Impugned order is set aside and revenue's appeal allowed.