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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-17-2006

Reported in : (2005)(180)ELT279TriDel

Judge : M Ravindran

Appellant : Cce

Respondent : Hotline Glass Ltd.

Judgement :

1. This appeal is directed against the order-in-appeal dated 27th May 2003 which set aside the order in original vide Modvat credit was denied to the respondent.

2. The relevant fact that arise for consideration are that the respondent availed Modvat credit on the various capital goods received by the respondent during the setting up of their factory for manufacture of panels and picture tubes. The revenue disputed the availment of the credit and issued a show cause notice for the denial of the Modvat credit on such capital goods. Adjudicating authority denied Modvat credit and also imposed penalty. On an appeal the learned Commissioner (Appeals) allowed the appeal after considering the detailed chart that indicated the usage of the capital goods by the respondent in their factory. The revenue is in appeal only against a small portion of credit on the Tor steel, cement and bars and angles.

3. Learned SDR submits that the bulk of credit on other capital goods is not disputed by them but the credit on Tor steel and cement and bars and angles is not available to respondent as these items are used for the construction purposes. It is his submission that issue of credit on Tor steel and cement is now settled by the division bench of the tribunal in the case of Indo Rama Synthetics (1) Ltd v. CCE Nagpur as reported at .

4. Learned advocate on the other hand submits that the respondent in the manufacture of Furnace used the TOR steel cement and bars and angles, which is required for the melting of glass. It is his submission that the order of learned Commissioner (Appeals) is correct and has followed the law settled by the tribunal in these case. He relies upon the decision of the tribunal in the case of CCE, Trichy v.India Cements 5. Considered the submissions made by both sides and perused the records. The dispute is regarding the benefit of Modvat credit on the items, which were used for the manufacture of Furnace. It is not in dispute that the Tor steel, cement and bars and angles were used for the manufacture of 'Furnace'. It is also not in dispute that the respondent uses Furnace for melting the inputs used for manufacture of his final products, Picture tubes. I find that the learned Commissioner (Appeals) has come to the conclusion that the input credit, that is being disputed, were utilized for the manufacture of capital goods, which used in or in relation to the manufacture of the final products.

It is also seen that the revenue in not able to show from records that the disputed inputs were utilized for construction of sheds or office building etc. In the absence of any contrary evidence, findings of the learned Commissioner (Appeals) are to be upheld. It is also seen from records that the detailed chart indicating the usage of the disputed inputs was produced before the lower authorities and was accepted.

6. On the perusal of the case law relied upon by the learned SDR it is noticed that in that case the tribunal has at the time of hearing of stay application held that steel and cement cannot be held as inputs.

As against that, the tribunal's later decision in the case of India Cements (supra) is directly on the point. The tribunal in the said decision has held as under: We have considered the rival submissions and the judgments pressed into service and are of the considered opinion that rebar coils, CTD bars, TOR steel, joists and cement have been used for construction of the plant comprising of concrete foundations, concrete silos for storing raw materials, clinker and cement, Pr-heater Tower Structure, Load Centres, etc. The appellant-assessee have emphasized and confirmed that they had not availed of the credit of duty in respect of that quantity of Rebar Coils, CTD bars, TOR Steel, Joists and Cement which were used for civil construction of their office premises, godown etc. It is now well settled legal position and the Apex Court in the case of CCE v. Jawahar Mills Ltd. has held that the language used in Explanation (1) of Rule57Q is very liberal and the capital goods can be machines, machinery, plant, equipments, apparatus, tools or appliances, the components spare parts and accessories thereof. The various decisions cited by the learned Advocate and learned Consultant for the appellant-assessee confirm the eligibility to credit in respect of steel structure and various building materials and items such as Rebar coils, CTD bars, TOR steel, Joists and Cement when used as structural support or in foundation of machineries etc. and therefore, these citations are squarely applicable to the facts of their case.

We are not in a position to countenance the plea taken by the learned JDR appearing on behalf of the Revenue. Respectfully, following the ratio of the said decision cited supra on the discussion, we are of the considered opinion that the credit would be admissible on Rebar coils, CTD bars, TOR steel, joist and cement.

We therefore, allow the appeal filed by the appellant-assesee.

7. It can be noticed that Modvat credit on cement and tor steel used for construction of silos for storing raw material, was allowed. It was submitted by the learned advocate that decision in the India cements case is not challenged by the revenue. If that be so, in the present case before me the tor steel and cement were used by the respondent for the manufacture of 'Furnace', which even by common knowledge is capital goods and inherent requirement of a factory manufacturing glass items.

8. Accordingly, in the facts and circumstances of the case, respectfully following the decision of division bench in the case of India Cements Ltd (supra) the

impugned order does not require any interference and is correct and needs to be upheld. Revenue's appeal is dismissed.