Daya Sugar Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-22-2006

Judge : P Das

Appellant : Daya Sugar

Respondent : Cce

Judgement :

1. The appellant challenged the impugned order dated 30.9.2004 passed by the Commissioner(Appeals) in so far as disallowance of modvat credit on capital goods viz. welding electrodes.

2. The brief facts of the case, are that the appellants are manufacturer of V.P. Sugar & molasses under chapter subheading 1701.31, 1701.39 and 1703.10 of the Central Excise Tariff Act, 1985. The appellant had been availing the modvat credit on capital goods under the erstwhile Rule 57Q of the Central Excise Rules, 1944. Show cause notices were issued on different dates proposing to disallow the modvat credit on various reasons. The adjudicating authority has allowed the modvat credit of Rs. 10,78,913,00 out of total duty of Rs. 10,83,898.00 and disallowed the credit of Rs. 4,985.00 taken during the period July, 1999 to May, 2000 under Rule 57U of the erstwhile Central Excise Rules, 1944 alongwith imposition of penalty of Rs. 1,000/- under Rule 173Q(1)(bb) ibid.

3. Revenue filed appeal before the Commissioner (Appeals) on the issue of eligibility of Modvat credit on welding electrodes, nut and bolts and M.S. structure,

as capital goods. By the impugned order dated 30.9.2004, the Commissioner(Appeals) held that nut and bolts and M.S.structure are eligible capital goods but, welding electrodes are not capital goods being not the component/spare of the specified capital goods. Hence, the present appeal is filed by the appellant against the disallowance of modvat credit on welding electrodes.

4. The learned Counsel Shri Alok Arora argued the matter at length. It has been submitted by the learned advocate that welding electrodes are eligible capital goods as held by the Hon'ble Tribunal in the following decisions:India Sugar & Refineries Ltd. v. CCE, Bangalore 2006 (74) RLT 61 (CESTAT-Ban.), wherein it has been held that welding electrodes, oxygen gas and acytelene gas used for welding punctured pipes carrying hot sugar juice during manufacture of sugar are eligible inputs as used in or in relation to manufacture of sugar. In that case, the Tribunal followed the Larger Bench judgment in the case of Union Carbide India Ltd. v. CCE, Calcutta-1, 1996 (15) RLT-144(CEGAT-LB) and CCE, Meerut-1 v. Modi RubberLtd. 2000(38) RLT- 718(CEGAT-LB).

(2) Manikgarh Cement v. CC and CE, Nagpur 2003(58) RLT-678 (CESTAT-Mum.), where it has been held that welding electrodes used for repairing and remaking old worn out machine parts are eligible capital goods.Maihar Cement v. CCE, Raipur 2003 (55) RLT-299 (CEGAT-Del.), wherein it has been held that welding electrodes used for repairing and remaking of worn out parts of machinery to be treated as used in or in relation to manufacture of final product and are entitled to modvat credit. In this case, the Tribunal followed the decision in the case of CCE, Meerut-I v. Modi Rubber Ltd. 2000 (38) RLT-718 (CEGAT-LB). It has further been held that a declaration filed by the assessee in terms of Rule 57Q is sufficient for the purpose of extending credit within meaning of Rule 57A.The learned advocate also submitted that the Hon'ble High Court of Rajasthan in the case of CCE, Jaipur v. Neer Shree Cement Ltd. and Ors.. by order dated 8.8.2003 rejected the reference application filed by the Revenue. In this case, the assessee had been availing the modvat credit on inputs and capital goods under Central Excise Rules, 1944 and also availed modvat credit on welding electrodes used for repairing machinery installed in their factory for the purpose of manufacturing of cement and clinker.

5. The learned D.R. submitted that the Commissioner (Appeals) has rightly held that modvat credit is not eligible on welding electrodes as capital goods. He relied upon the decision of the Tribunal in the case of Commissioner of Central Excise, Noida v. D.S.M. Ltd., wherein it has been held that modvat credit under Rule 57Q(1) was not available on the welding electrodes during the period of dispute i.e. September, 1997 to March,1998. In this case, the Tribunal followed the Larger Bench decision in the case of Jaypee Rewa Plant v. CCE, Raipur, also contended that the case laws relied upon the learned advocate are in connection with the welding electrodes as inputs, but in the present case, the appellant claimed modvat credit on welding electrodes as capital goods and, therefore, the said case laws are not applicable here.

6. I find that the Tribunal in the case of India Sugars and Refineries Ltd. (Supra) held that welding electrodes are eligible inputs as used in or in relation to the manufacture of sugar after following the larger bench decision in the case of Union Carbide India Ltd. v. CCE, Calcutta-I and Modi Rubber Ltd. (Supra). Further Hon'ble High Court of Rajasthan also rejected the reference application filed by the Revenue holding that the "Welding Electrodes" which are utilized for repairing machinery used for manufacture of cement and clinker are to be treated as input in the manufacture of cement and clinker. Respectfully following the decision of the Hon'ble High Court of Rajasthan in the case of CCE, Jaipur v. Neer Shree Cement Ltd. and Ors. and the Tribunal's decision in the case of India Sugars and Refineries Ltd. v.CCE, Bangalore (Supra) and Maihar Cement v. CCE, Raipur (Supra), I set aside the order of the Commissioner (Appeals) in so far as it disallows the modvat credit in respect welding electrodes that the "Welding Electrodes" utilized for repairing machinery used for manufacture of finished goods are eligible for Modvat credit.