

Commissioner of Central Excise Vs. Modern Steels Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-07-2006

Reported in : (2007)(116)ECC237

Judge : R Abichandani

Appellant : Commissioner of Central Excise

Respondent : Modern Steels Ltd.

Judgement :

1. The appellant challenges the order of the Commissioner (Appeals) by which the order of the adjudicating authority disallowing cenvat credit of the total amount of Rs. 4,42,296/-, as proposed in the three show cause notices, and imposing penalty of the like amount as well as charging interest, was set aside.

2. The Commissioner (Appeals) relied upon the decision of the Tribunal in Simbhaoli Sugar Mills Ltd. v. CCE reported in 2001(135) ELT 1239(Tri.-Delhi), in which it was held that if the items were used in the construction of the wall or any part of the plant structure as construction material, that part should be disallowed. However, if the same material is used for raising structure to support various machines parts, then they will be covered by explanation to Rule 57Q.3. As per the show cause notices, during the period between 2003 and October 2003, the noticee had wrongly taken and utilized credit of central excise duty paid by them at 16% on receipt/purchase of CTD bars, angle, channel, MS bar, joist and shapes and sections falling under Chapter 72 of the Central Excise Act, 1985 for their

project work, treating these goods as capital goods. Since it appeared that they did not fall within the purview of the definition of "capital goods" under Rule 2 of the CENVAT Credit Rules, 2002, the Revenue initiated the proceedings for recovery of the wrongly availed cenvat credit.

4. According to the assessee, the goods involved were not used in civil construction, but were used for framework of EOT crane set up, without which EOT crane cannot function. If the EOT crane does not work, the entire process of manufacture of steel ingots and billets specially in concast system comes to stand still. It was further urged that these goods were a technical necessity for the manufacture of finished goods in the factory of the noticee, because EOT cranes cannot operate without their use. It was contended that the goods in question became part/accessory of the machine. Reliance was placed on the decision of the Tribunal on Simbhaoli Sugar Mills Ltd. v. CCE, Meerut reported in 2001 (135) ELT 1239 (Tri.-Del.), in which it was held that joints, channels, angles, SS welded tubes, HR plates etc. were eligible to modvat credit as capital goods under the erstwhile Rule 57Q of the Central Excise Rules, 1944. It was submitted that the Supreme Court had dismissed the SLP of the department against that order summarily.

5. The adjudicating authority on the basis of the material on record came to the conclusion that the goods falling under Chapter 72 could not be said to be essential parts of the machinery of the assessee, namely, furnace and electric crane, because both the machines were complete and could work without these goods. It was held that the parts of steel supporting structures were fabricated to support the furnace or electric crane and were embedded in the earth and as such steel supports were non-excisable being permanently embedded in the earth. It was, therefore, held that the steel supporting material could not be considered as part of any machinery or equipment, but was only the building material, as held by the Tribunal in the case of Malvika Steels Ltd. v. Commissioner of Central Excise . It was, therefore, held that the goods were wrongly treated as "capital goods" in contravention of Rule 2 of the Cenvat Credit Rules. The aforesaid recovery which was directed and the penalty imposed by the adjudicating authority came to be set-aside by the Appellate Commissioner.

6. The Revenue has contended that the Commissioner (Appeals) did not realize the fact that the goods used in civil construction work exclusively related to building material and could not be treated as "capital goods". Reliance was placed on the decisions of the Tribunal in Commissioner of Central Excise, Indore v. Narmada Sugar Ltd. , Devidayal Aluminium Industries Pvt. Ltd.Hindustan Zinc Ltd. v. CCE, Jaipur 7. It appears that the Appellate Commissioner has disposed of the appeal relying on the decision of the Tribunal in Simbhaoli Sugar Mills Ltd. (supra). In paragraph 5 of that judgment, the Tribunal had referred to the earlier judgment in Malvika Steel Ltd. (supra), reiterating its ratio that if the items are used in the construction of the wall or any part of the plant structure as construction material, that part was to be disallowed. However, if the same material is used for raising structure to support the various parts of machines, then they will be covered by the explanation to Rule 57Q. "Plant, no doubt, has wide connotation and covers machine, machinery, equipment, parts, accessories and components, but also the permanent structure in the form of walls etc. Both in Simbhaoli Sugar Mills Ltd. (supra) and Malvika Steel Ltd. the Tribunal was concerned with the definition of "capital goods" under Rule 57Q, which included plant as well as components of plant. The definition of "capital goods" given in the explanation to Rule 57Q(1) in paragraph 5 of the judgment in Malvika Steel Ltd. (supra), reads as under: (a) machines, machinery, plant, equipment, 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 and used for aforesaid purpose; (c) moulds and dies, generating sets and weigh-bridges used in the factory of the manufacture.

7. The word "plant" has a very wide meaning. As held by the Supreme Court in Scientific Engineering House (P) Ltd. v. Commissioner of Income Tax Plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as plant the article must have some degree of durability. The test to decide whether a particular article is 'plant' or not is : Does the article fulfil the function of a plant in the assessee's trading

activity? Is it a tool of his trade with which he carries on his business? If answer is in the affirmative it will be a plant.

This definition is noted only to indicate the wide meaning that the word "plant" has received in the context of the meaning of "capital goods" for the purpose of cenvat. Once the word "plant" and the expression "components, spare parts and accessories of plants" which were used in the erstwhile Rule 57Q, are kept out of consideration, in view of their being deliberately omitted in Rule 2(b) from the definition of "capital goods" then there would be no scope for considering the CTD bars, angles etc. falling under Chapter 72, as the components, spares or accessories of EOT crane or furnace because both these machines were complete and self-contained).

8. It is significant to note that the word "plant" was omitted from the explanation defining "capital goods" in Rule 57Q(1) by the substituted explanation, which was brought into force from 23.7.1996. It will also be noted, that in Rule 2(b) of the CENVAT Credit Rules defining "capital goods", which applied in respect of the period relevant to the present case, namely, April 2003 to October 2003, expression defined in Rule 2(b) of the CENVAT Rules, "capital goods" means: (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act; (iii) components, spares and accessories of the goods specified at (i) and (ii) above; It is evident from the deliberate change in the definition of "capital goods" by omitting "plant" as well as "components, spare parts and accessories of plant thereof" there has come about a major shift in legislative intent, because plant was capable of a very wide meaning.

The decisions in Simbhaloi Sugar Mills Ltd. and Malvika Steel Ltd. which were rendered in the context of the definition of "capital goods", in explanation to Rule 57Q(1) which included plant and the components, spares and accessories of plant, cannot apply, in respect of the aforesaid period of April 2003 to October 2003, in relation to which the definition of capital goods, as provided in Rule 2(b) of the CENVAT Credit Rules, 2002 would alone apply. Since plant and components or parts of plants have been excluded under Rule 2(b) of the CENVAT Credit

Rules, the decisions in Simbhaoli Sugar Mills Ltd. and Malvika Steel Ltd. have been erroneously relied on by the Commissioner (Appeals).

9. In the above view of the matter, the impugned order made by the Commissioner (Appeals) cannot be sustained and it is hereby set aside and the order in original is restored. This appeal is accordingly allowed.

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