The Commissioner of Central Vs. Solaris Chemtech Ltd.

The Commissioner of Central Vs. Solaris Chemtech Ltd.

SooperKanoon Citation : sooperkanoon.com/46796

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jan-10-2008

Reported in : (2008)(128)ECC158

Judge : S Peeran

Appellant : The Commissioner of Central

Respondent : Solaris Chemtech Ltd.

Judgement :

1. This is a revenue appeal arising from OIA No. 277/06 CE dated 15.9.06. The Commissioner (Appeals) in the impugned order has held that the administrative office is part of factory and the electricity utilized in the office located inside the factory is eligible for the benefit of Cenvat credit. The Commissioner (Appeals) had earlier remanded the matter on this point for verifying as to whether the administrative office is part of the registered premises vide his earlier OIA No. 131/06 dated 2.5.06. The Assistant Commissioner vide OIO No. 1/2005-06 dated 1.6.06 has denied the benefit although has clearly held in para 10 of his Order that the administrative office in question is situated within the registered premises. In view of this factual finding, the Commissioner (Appeals) in the impugned order has upheld the assessee's plea that the electricity utilized in the administrative block is eligible for the benefit of cenvat credit. This is under challenge.

2. The revenue contend in the appeal that electricity used in the administrative block cannot be granted the benefit of cenvat credit as there is no manufacturing

activity. Learned DR relied on the judgment in the case of Indorama Synthetics Ltd., v. CCE, Nagpur wherein it has been held that area surrounding factory premises shown in the ground plan is not to be treated as factory area. He also refers to the judgment in the case of S.A.I.L. v.CCE, Jamshedpur 2001 (137) ELT 572 (Tri-Kol) wherein the credit has been denied for electricity used in the township area.

3. Learned Counsel distinguishes the judgment of SAIL and submits that the situation in their case is not pertaining to township. They have reversed the credit with regard to the township area but he submits that administrative block is part of the factory and the benefit cannot be denied. He also distinguishes the judgment cited in the Appeal memo in the case of Indorama Synthetics Ltd v. CCE Nagpur .

He points out that Apex court in their own case i.e. CCE v. Solaris Chemtech Ltd. , has held that inputs used for generation of electricity which is consumed in the residential colony of factory's workers families, schools are not admissible. The Apex court has not referred to the administrative office. He submits that administrative office is part of the manufacturing unit and the Assistant Commissioner has clearly held in para 10 of the impugned order that administrative block/office is situated within the registered premises.

4. On a careful consideration I notice that the Commissioner (appeals) has held that it is not correct to deny the credit on the ground that administration or commercial activity of office concerning the manufacturing activity of the factory is not ancillary or incidental to manufacturing operations. He has noted that the process of manufacturing involves series of administrative and commercial work which are liable to be treated as activities connected to manufacturing. He has concluded that the office is therefore a part of the factory. This is challenged by the revenue. The Apex Court in the assessee's own case held that residential colony of factory's workers families, schools are not part of the factory premises. The aspect pertaining to the administrative block and office being not part of the factory has not been dealt with in the assesse's own case. The Assistant Commissioner has already given a finding in the OIO that administrative block is situated within the registered premises. The definition of factory includes any precincts where

manufacturing activity takes place. Administrative work is connected with the manufacturing activity in the factory. All the manufacturing activity is controlled and guided from the administrative block. Therefore the electricity used in the administrative block cannot be held to be not part of the factory premises. The judgment of SAIL is clearly distinguishable as in that case the denial was pertaining to electricity used in township area.

5. In the present case, the assessee has already reversed the credit with regard to the use of electricity used in the residential colony.

The finding given by the Commissioner is correct and proper. There is no merit in this appeal and the same is rejected.