

Union of India (Uoi) Vs. Rishabhdev Textiles

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Court : Rajasthan

Decided On : Nov-27-2001

Reported in : 2002(141)ELT352(Raj)

Judge : Rajesh Balia and; Harbans Lal, JJ.

Acts : Central Excise Rules, 1944 - Rule 57Q; [Central Excise Act, 1944](#) - Sections 35H(1)

Appeal No. : D.B. Civil Reference Petition No. 32 of 2001

Appellant : Union of India (Uoi)

Respondent : Rishabhdev Textiles

Advocate for Def. : Sanjeev Johari, Adv.

Advocate for Pet/Ap. : V.K. Mathur, Adv.

Judgement :

ORDER

Rajesh Balia, J.

1. Heard learned Counsel appearing for the parties.
2. This application is under Section 35H(1) of the [Central Excise Act, 1944](#). This has arisen because the Customs, Excise and Gold (Control) Appellate Tribunal,

New Delhi (for short 'CEGAT') by its order dated 20-2-2001 has rejected the applicant's application under Section 35G(3) of the Act of 1944. An application to refer the following question said to be arising out of its appellate order to this Court for its opinion has been made :-

'Does the learned Tribunal has the power to allow the benefit of Modvat credit to the goods under Rule 57Q of the Central Excise Rules, 1944 which are otherwise not specifically mentioned in the Rule itself ?'

3. The question has been raised in the context of the facts and circumstances about which there is no dispute that the articles in question are voltage regulators. The assessee has claimed Modvat credit of Rs. 30,320/- in respect of excise duty paid on voltage regulators used by him in his factory premises as an equipment, which regulate the voltage of electricity flow to the machines used in the manufacture of textiles by the assessee in order to protect the machine from any damage which may occur due to fluctuation in the voltage. The Assessing Officer found that the equipment has nothing to do with the manufacture of final product as it is neither a machine used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product.

4. The Commissioner of Customs (Appeals) accepted the contention of the assessee by upholding the ground raised by the assessee that voltage stabilizer is essential for stabilizing the flow of electricity for the proper functioning and maintenance of the machines to achieve a regular and proper production of the final product, as the power fluctuations is bound to cause damage to the machines. The voltage regulator is one of the essential equipment with the machine to run the machine properly. With this finding, the appeal was allowed. The order passed by the Assessing Officer was set aside.

5. The Tribunal following its earlier decision in case of CC Jaipur v. Shanti Synthetics reported in [1998 (97) E.L.T. 533 (Tribunal) = 1997 (20) RLT 689 (T)] and held that voltage stabilizer/voltage regulator is capital goods on which Modvat credit is admissible under Rule 57Q of the Rules.

6. It has been contended by the learned Counsel for the Revenue that since two Tribunals have taken different view on the question of admissibility of Modvat facility on the voltage stabilizer on the ground that it is not directly used in manufacture of and product through any process, it is not capital goods within the meaning of Explanation appended to Rule 57Q, therefore, a question of law does arise out of the Tribunal's order.

7. Learned Counsel for the respondent has defended the orders passed by the Tribunal on appeal as well as while rejecting the application under Section 35G(3) of the Act.

8. We are of the opinion that though the question raised about interpretation of the provisions defining the meaning of capital goods within the meaning of Rule 57Q give rise to a question of law which would ordinarily required to be referred to this Court for the purposes of its answer but as in our opinion, the answer is self evident from the language of the provision, such a question need not be referred to this Court for its decision. The provisions of Rule 57Q as it stood at the relevant time when the notice was issued and the order was made by the Assistant Collector reads as under :-

'57Q. Applicability. - (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 of 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

(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 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.

Explanation. - For the purposes of this section, -

(1) 'capital goods'

(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 used for aforesaid purpose; and

(c) moulds and dies, generating sets and weigh-bridges used in the factory of the manufacturer.

(2) 'specified duty' means duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975).

(2) Notwithstanding anything contained in Sub-rule (1), no credit of the specified duty paid on capital goods shall be allowed if such duty has been paid on such capital goods before the 1st day of March, 1994.

9. The components, spare parts and accessories of the capital goods now enumerated in the list of goods under Rule 57Q since its amendment still continue to be capital goods for the purpose of availing Modvat credit. The Explanation appended to Rule 57Q gives a very wide definition of capital goods in respect of which Modvat facility has been extended for availing credit in respect thereof. It has three classes of machines, plants and equipments which could be included therein.

10. Firstly, Clause (a) includes 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. Thus, it refers to machines directly used in the process of manufacturing for the purpose of availing Modvat facility on capital goods.

11. Clause (b) widens the scope of Clause (a) by including within the term 'capital goods' not only machines, appliances etc. directly used in the manufacturing of the goods under Clause (a) but also the components, spare parts and accessories of the aforesaid machines, machinery, plant, equipment, apparatus, tools or appliances which are used in a factory for the purpose mentioned in Clause (a). The word used for the aforesaid purpose mentioned in Clause (a) namely, for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products.

12. Thus, not only the machines which are directly used in the manufacturing part but components, spare parts and accessories of the such machines are also included in the definition of 'capital goods'

13. Lastly Clause (c) includes moulds and dies, generating sets and weigh-bridges used in the factory of the manufacturer.

14. The definition is wide enough to cover the goods other than directly used in the manufacture of the end-product is further apparent from the fact that the scope of Rule 57Q has been so stated in the case of Commissioner of, Ex., Coimbatore v. Jawahar Mills Ltd. reported in 2001 (132) E.L.T. 3 (S.C). After referring to Rule 57Q, as has been noticed above by us, the Court said that,

'The aforesaid definition of 'capital goods' is very wide. Capital goods can be machines, machinery, plant, equipment, apparatus, tools or appliances. Any of these goods if used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product would be 'capital goods', and, therefore, qualify for availing Modvat credit. Per Clause (b), the components, spare parts and accessories of the goods mentioned in Clause (a) used for the purposes enumerated therein would also be 'Capital goods' and

qualify for Modvat credit entitlement. Clause (c) makes moulds and dies, generating sets and weigh-bridges used in the factory of the manufacturer as capital goods and thus qualify for availing Modvat credit. The goods enumerated in Clause (c) need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer. Thus, it can be seen that the language used in the explanation is very liberal.'

The Supreme Court has further said

'they had no difficulty in accepting the contention of the learned Additional Solicitor General that, under these circumstances, user will determine whether an item qualifies or not the requirement of Clause (a).'

15. Obviously, making it clear that Clause (a) applies only to such capital goods which are directly involved through their use in the manufacture process of their end-product.

16. The case before their Lordships of the Supreme Court related to Clause (c) and their Lordships clarified, as noticed by us above, that the goods enumerated in Clause (c) need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer. Thus, the question of actual user, by the Apex Court, has been confined to such capital goods which fall in Clause (a) and is not necessary requirement in Clause (c). It is not the case of the assessee either that voltage stabilizer/voltage regulator are directly used in the process of manufacture of end-product.

17. We draw attention to the finding of the fact reached by the Commissioner of Customs (Appeals) who in unequivocal terms has concluded that,

'In the grounds of appeal, the appellant has pointed out that the voltage stabiliser is essential for stabilizing the flow of electricity for the proper functioning and

maintenance of the machines to achieve a regular and proper production of the final product, as the power fluctuations is bound to cause damage to the machines.

The voltage regulator is one of the essential equipment with the machine to run the machine properly.

Therefore, voltage stabilizer is to be considered eligible for Modvat credit.

I find myself in agreement with the line of reasoning adopted by the appellant which appears to be very cogent. And I am, therefore, inclined to set aside the impugned order and grant the consequential relief.'

18. This finding that the voltage stabilizer is used for the proper functioning and maintenance of the machines to achieve a regular and proper production of the final product, as the power fluctuations is bound to cause damage to the machines is not in challenge. This immediately draws to our mind Clause (b) of the definitions, defining capital goods. It not only includes component part of the machines described in Clause (a) nor is confined to spare parts for the machines used for the purpose described in Clause (a) but also includes 'accessories' to the said machine. The word 'accessories' has not been defined to give any specific meaning for the purposes of the Act nor it has a technical meaning. In these circumstances, if the dictionary meaning or the meaning assigned to the word 'accessory' in the absence of the definition in relation to the machines is concerned, it become more than obvious without any doubt about the same that the 'accessories' of a machine denotes something extra which is added to help in a secondary way and which contributes in the functioning of a machine in a subordinate degree though it is not essential or necessary part of it.

19. Black's Law Dictionary in its 5th edition defines the expression 'accessory' as anything which is joined to another thing as an ornament or to render it more perfect or which accompanies it, or is connected with it as an incident or as subordinate to it or which belongs to or with it as an adjunct or accompaniment.

20. It further says that 'a thing of subordinate importance aiding or contributing in secondary way or assisting in or contributing to as a subordinate is also an 'accessory'.'

21. In Chamber's Twentieth Century Dictionary, 'accessory' means anything additional, secondary, or non-essential item of equipment.

22. Oxford's English Dictionary defines 'accessory' of things coming as an accession, contributing in an additional and hence subordinate degree, additional, extra, adventitious. Adventitious in turn means 'of the nature of an addition from without extrinsically added; not essentially inherent; supervenient, accidentally and casual'.

23. Allahabad High Court in case of Sales Tax Commissioner v. Lachman Singh reported in (1972) 30 STC 372 has also expressed the same view. The term 'accessory' has not been defined in U.P. Sales Tax Act. The Court said that it is not a technical or a scientific term, therefore, the expression has to be construed as it is ordinary understood. In the New English Dictionary by W.A. Craig, the word 'accessory' when used in relation to a thing means 'something attributing in a subordinate degree to a general result or effect, an adjunct or accompaniment. The Court was dealing with the articles like oil-can or a steel file held an oil-can or steel file may not be adjuncts but certainly they are accompaniments of a chaff-cutter. They contribute in a subordinate degree to a general result or effect of a chaff-cutter. Without them, a chaff-cutter cannot work efficiently for a long time. Oil-cans and steel files are accessories of chaff-cutter and their turnover is exempt from tax.

24. The Division Bench of Karnataka High Court in K.B. Dani v. State of Karnataka reported in (1979) Kant. LJ 236 has accepted the meaning assigned to the word 'accessory' in Webster's Third New International Dictionary to be an object or device that is not essential in itself but that adds to the beauty, convenience or effectiveness of something else.

25. A similar view has been expressed by the Kerala High Court in case of Deputy C.Ag. IT. & S.T. v. Union Carbide (India). Ltd. reported in (1976) 38 STC 198

(Ker.), by Mysore High Court in 1970 (25) STC 381, by Patna High Court in A.I.R. 1967 (Patna) 369 and by Madras High Court in A.I.R. 1968 (Madras) 113. There is no decision counter to this which has been brought to the notice of the Court.

In view of this universal meaning of the expression 'accessory' which can be assigned to the equipment which is used as addenda or adjunct, not essential but which adds to its efficiency and wide meaning adopted by the Courts universally, and keeping in view in the context of definition of capital goods given in Explanation to Rule 57Q, the finding recorded by the Commissioner, Central Excise (Appeals) about the user to which the voltage regulator/voltage stabilizer in question for efficient use of machines used in the manufacture of textiles by the assessee, the answer to the question referred to the Court by the applicant to us appears self evident and obvious i.e. to say that the articles in question are capital goods as accessories of the machines used for the purpose of manufacture of textiles by the assessee and are entitled to Modvat credit in respect thereof under Rule 57Q.

26. In view of our aforesaid conclusions, we decline to grant the application and the same is hereby rejected.

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