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Court : Chennai

Decided On : Jan-24-2008

Reported in : 2008(125)ECC203; 2008(151)LC203(Madras)

Judge : K. Raviraja Pandian and ;Chitra Venkataraman, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 35H(1); [Central Excise Tariff Act, 1985](#); Central Excise Rules, 1944 - Rule 57A and 57Q

Appeal No. : Reference Case Petition Nos. 49 to 56 of 2001

Appellant : The Commissioner of Central Excise

Respondent : Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench and the Madras Aluminium Co

Advocate for Def. : N. Prasad, Adv. for ;N. Inbarajan, Adv. for Respondent 2

Advocate for Pet/Ap. : T.S. Sivagnanam, SCGSC

Disposition : Petition dismissed

Judgement :

ORDER

K. Raviraja Pandian, J.

1. These reference case petitions are filed under Section 35H(1) of the [Central Excise Act, 1944](#). The assessee, the Madras Aluminium Company Ltd., is manufacturer of Aluminium and articles thereof falling under Chapter Heading No. 76 of the [Central Excise Tariff Act, 1985](#). It availed the credit of duty on 40 items to the tune of Rs. 77,21,450.41 declaring the same as inputs under Rule 57A of the Central Excise Rules, 1944, on the premise that the inputs were used in or in relation to the manufacture of final products. Show cause notices were issued proposing denial of Modvat credit and imposition of penalty inasmuch as the said goods were not considered as inputs in terms of Rule 57A of the Central Excise Rules. The Assistant Commissioner, by his order in original in Sl. No. 112/96 dated 16.05.1996, Sl. No. 19/97 dated 01.04.1997, Sl. No. 95/97 dated 13.11.1997 and Sl. No. 1/1998 dated 08.01.1998 disallowed the credit of Rs. 75,80,575.68 and allowed the remaining credit in respect of lubricating oil. In respect of the issues which were disallowed by the lower authorities, the assessee filed an appeal and in respect of the issues which were allowed, the revenue filed appeals to the Commissioner of Appeals (Trichy) who by his order dated 30.10.1998 upheld the order in original in respect of certain goods and allowed credit in respect of the remaining goods. Against that order, both, the department and the assessee filed appeals before the CEGAT. The CEGAT by its order dated 08.12.2000 allowed the Modvat credit in respect of certain goods and in respect of certain other items remanded the matter back to the authorities concerned for de nova consideration. In respect of the remanded issues, the revenue has accepted the same in view of the fact that the said issues are covered by the decision of the Patna High Court in the case of Union Carbine India Ltd. . However these reference petitions are filed by the revenue by raising the following questions of law:

1. Whether the Tribunal is correct in holding that the said items are in the nature of inputs used in or in relation to the manufacture of final product as specified under

Rule 57A of Central Excise Rules, 1944, and

2. Whether declarations under Rule 57Q made would entitle the assessee to credit under Rule 57A even though a declaration was not in terms of Rule 57A?

2. The primary contention of the revenue in this case is that the items are not used in or in relation to the manufacture of final product. The first of the items is Hydrochloric Acid (HCL). According to the department, HCL was used to treat the effluent which was a wastage obtained and hence it was not used in or in relation to the manufacturing process. This issue is no longer res integra as it has already been considered by the Supreme Court in the case of Indian Farmers Fertiliser Co-operative Ltd. v. C.C.E., Ahmedabad : 1996(86)ELT177(SC) . In that case raw naphtha was obtained at the concessional rate and used for producing ammonia which in turn was used partly, directly in the urea plant and partly, indirectly in the production of urea by being employed in off-site plants, namely, water treatment plant, steam generation plant, inert gas generation plant and effluent treatment plant, all of which were part of the integral process of the manufacture of urea. After taking into consideration the earlier judgment in the case of C.C.E., Calcutta II v. Eastend Paper Industries Ltd. : 1989(43)ELT201(SC) , J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur : [1965]1SCR900 , C.C.E., New Delhi v. Ballarpur Industries Ltd. : 1990ECR279(SC) and Deputy CST v. Thomas Stephen & Co. Ltd. : 1988(34)ELT412(SC) in paragraph 9, the Supreme Court held as follows:

9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end product is part and parcel of the manufacturing process of that end product. The ammonia used in the treatment of effluents from the urea plant of the

appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption.

Hence, the HCL used to treat the effluent would qualify for the credit.

3. The other issue is that certain items are used for manufacture of Soderberg paste which is used as anode in the electrolytic cell. As the electrolytic cell did not qualify as goods the anode which is made out of the items forming a component of the cell was not eligible for credit under Rule 57-A. In respect of the very same item which is used for manufacture of soderberg paste which is a by-product in the manufacture of Aluminium in the case of Indian Aluminium Co. Ltd. 1988 (98) ELT 397 (T) it has been held in favour of the assessee. Factually, the Tribunal found that the Soderberg which is a paste and which is an intermediate product essential for manufacture of aluminium. In the light of the factual finding that input is used essentially in or in relation to the manufacture of end product Aluminium, the finding of fact is approved and as such the assessee is entitled to take credit.

4. The next item is Non-Ferric Alum. According to the department Non Ferric Alum was used for recovering cryolite for recycling and also for water treatment purposes. As Non Ferric Alum was not used in or in relation to the manufacture of final product, it is the case of the department that it would not come within Rule 57A. It is an admitted fact that the Alum was used for recovering cryolite for recycling and also for water treatment purposes. The reasoning stated by the Supreme Court in the case of Indian Farmers Fertiliser Co-operative Ltd. v. C.C.E., Ahmedabad : 1996(86)ELT177(SC) would equally apply to this issue as well.

5. In respect of M.S. Angles/Channels, etc., before the authorities, a short write up on the materials used for the fabrication of electrolytic parts has been given and the same was taken note of. On the basis of the write up the Tribunal satisfied that these items were not used for repairing or maintenance but actually were used in or in relation to the manufacture of the final product. We approve the finding of fact that these items are used in or in relation to the manufacturing activity as nothing contrary has been placed before us.

6. In respect of oxygen gas, acetylene gas, electrodes, welding wire and pig iron, the Tribunal held that Modvat credit were to be allowed following the judgment of the Tribunal in . The issue has been covered in favour of the assessee by the decision of the apex Court in the case of C.C.E., Coimbatore v. Jawahar Mills Ltd. : 2001(132)ELT3(SC) in which the earlier decision of the Supreme Court in the case of Indian Farmers Fertiliser Co-operative Ltd. v. C.C.E., Ahmedabad : 1996(86)ELT177(SC) , has been taken note of. Incidentally with regard to all these issues, the department has contended that the case of Jawahar Mills Ltd. 108 ELT 47 held in favour of the assessee has been taken on appeal by the department to the Supreme Court and the same is pending. Now the Supreme Court in 132 ELT 3 decided the issue in favour of the assessee.

7. The next of the items is transformer oil on which credit was given. The contention was that the transformer oil was not used in or in relation to the manufacture of Aluminium, but used as a coolant in the transformer to provide uninterrupted power supply to the process and hence ineligible for credit. We are not able to accept the stand of the department. Without power, manufacturing activity cannot be carried out and in order to have an uninterrupted power, the transformer has to perform its optimum potential and in order to keep the transformer to its optimum potential the use of coolant is necessary and hence, we concur with the fact finding authority.

8. Rodline and Alfloc, according to the department, are used in boiler water for the preparation of softening watering so that scale formations are reduced and break down of boiler does not take place where steam is generated for use and also reduce the corrosive effects of acid in washing the evaporator and heat exchanger. The ratio of the Supreme Court in the case of Indian Farmers Fertiliser Co-operative Ltd. v. C.C.E., Ahmedabad : 1996(86)ELT177(SC) is equally applicable to this item also.

9. In view of the above, we find no substantial question of law to direct the Tribunal to state a case. The Reference Case Petitions are dismissed. No costs.