

Collector of Central Ex. Vs. Polyolefins Industries Ltd.

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SooperKanoon Citation : sooperkanoon.com/7946

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-14-1994

Reported in : (1995)(77)ELT725Tri(Mum.)bai

Appellant : Collector of Central Ex.

Respondent : Polyolefins Industries Ltd.

Judgement :

1. This Reference Application has been moved by the Revenue against the order of this Bench bearing No. 461/94-WRB, dated 15-3-1994, contending that certain points of law have arisen out of the order, calling for a reference to the High Court.

2.1 The facts involved in the appeal decided by this Bench can be briefly stated as below: 2.2. The respondents are engaged in the manufacture of Rubber processing chemicals, for the manufacture of which, they bring in duty paid Mafron/Freon gas and claim Modvat Credit in respect of duty paid on these two items. Their contention that these two items are inputs used in or in relation to the manufacture of Rubber processing chemicals was rejected by the department. The ground taken by the Department was that they are refrigerent gases and they are meant for the functional operation of the refrigerating plant, hence they cannot be said to be used in or in relation to the manufacture of the final product. This issue came in appeal before us.

2.3. We held the issue in the appeal filed by the respondents in their favour for the following reasons. After taking note of the technical write-up on the use of these

gases, we held that these refrigerent gases are required in the process of manufacture for keeping the monoethylene glycol to the required level of temperature without which reaction will not take place to produce the final product of the required quality. We therefore, held that these gases are inputs used in relation to the manufacture of final product. While taking the view, we also considered the use of these refrigerent gases being akin to use of inflammable gases like oxygen/acetylene, which are used through the medium of flame torch for cutting the raisers and runners of steel castings, where we have already held that these consumable gases are inputs used in relation to the manufacture of steel castings. We also took note of the fact that in our order in Kopran's case No. 615-616/93 WRB dated 19-4-1993 we have held that Nitrogen gas used for creating an inert chilling atmosphere in the reactor vessel for enabling chemical reaction to take place is an eligible input for Modvat credit.

2.4 The present Reference Application moved by the Revenue seeks to raise the following two questions alleged to be arising out of the above decision : (a) Whether the refrigerent gases namely Mafron and Freon can be treated as inputs in terms of Rule 57A read with Rule 57G of the Central Excise Rules, 1944? (b) Whether the said refrigerent gases can be said to be hit by the exclusion clause under provisions of Rule 57A of the Central Excise Rules, 1944? 3. Shri K.P. Misra urges, pleading that the questions involve consideration of mixed questions of facts and law and hence would call for reference. He pleads that refrigerent gases cannot be treated as consumables. Their purpose is only for use in the chilling plant and they go in only for functioning of the machine. These gases cannot be compared to the inflammable gases like oxygen/acetylene gases, which are consumed instantaneously through medium of flame torch. Here these gases form part of the refrigerating machine as a chilling media. In the case of domestic refrigerators such gases are put up duly sealed and form part of the refrigerator. Here the plant for refrigeration is installed and for making it operational, these gases are brought in as a chilling media for repetitive use and hence their use go in only for making the machine operational. This distinction in factual position of use with regard to oxygen/acetylene vis-a-vis the refrigerent gases in this case would give rise to a mixed question of fact and law calling for a reference to the High Court.

4. Shri Prakash Shah, the Id. advocate however, pleads that these gases are not permanent fixtures to the plant as in the case of domestic refrigerators, where they are put in a sealed unit. They are brought in cylinders and their consumption is one to two cylinders per week.

Hence, they are consumable only. He also refers to the period of S.C.N. and the quantity consumed during that period to support that even during the period of S.C.N., the quantity consumed works out to one cylinder per week. Hence, the decision taken by the Bench in the case of Mukund Iron in regard to acetylene gas and that in the case of Koprani Ltd. 1993 (67) E.L.T. 377 would be squarely applicable. Hence, the distinction on facts with regard to the above cases is not real for making this as a mixed question of fact and law, calling for a reference. In other words, he would plead that it is purely a question of facts. Hence, no reference is called for.

4.1 After hearing both the sides, we don't dispute that Mafron and Freon gas are refrigerant gases. Because, they have chilling properties, their circulation in the plant as refrigerants is necessary. In that manner, even if these gases are construed as going with the function of the plant, there is no denial that circulation of these gases is necessary for keeping Monoethylene glycol at the required level of temperature to produce the proper chemical reaction enabling crystallisation and production of the right quality final product. Hence, these gases are used in the process of manufacture of final product as an input, required for enabling chemical reaction to take place. The same position was noticed by us in the case of nitrogen gas brought in for creating a chilling and inert atmosphere for enabling proper chemical reaction to produce the final product [vide our decision in Koprani Ltd. 1993 (67) E.L.T. 377]. We have dismissed the plea from the department that such gas is needed only for making the reactor vessel operational.

4.2. Now a new angle is brought by the Id. S.D.R. to create a distinction on facts between the case of acetylene gas and these refrigerant gases. There is no dispute that acetylene gas cannot be directly used for cutting steel castings. It is to be used through a flame torch (which is a tool or equipment). Merely because acetylene gas is used through a tool, can we call such a gas also a tool or its use

only for making the tool functional? Even if we agree that torch without acetylene is of no use; it can also be equally valid to say that acetylene is an essential input for making the steel casting by removing raisers and runners. That is the reason why we held it to be an eligible input for the manufacture of steel castings. The C.B.E.C. also seems to have clarified on this line extending Modvat benefit to acetylene gas. Now we are to consider the question whether in this case, refrigerant gas could be construed to be a part of the plant. The compressor could be an equipment or part, for chilling, just as a flame torch is a tool used for cutting. The gas used through the medium of torch or in this case through compressor can only be construed to be a consumable input and not as a part or equipment by itself. These refrigerant gases are brought in cylinders, as a consumable input for chilling the monoethylene glycol to the required level of temperature to effect chemical reaction. It may be used more than once in circulation; all the same it remains a consumable gas. It is not the frequency of use or the rapidity of consumption that could be the relevant factor for judging the question as to whether it is consumable or not. So long as it is clear that it is a gas brought in cylinders for replacement periodically once a week or fortnight, it is a consumable input. Merely because it is used more than once, it cannot become a part of the equipment or equipment by itself. Thus both acetylene gas considered earlier and refrigerant gas in this case are akin in their usage and there is no scope for making a distinction.

Hence such gas cannot be said to be hit by exclusion clause in Rule 57A treating those gases either as a tool or equipment or part thereof.

They remain a consumable input used through the medium of torch (in the case of acetylene) or compressor in this case of refrigerant gases and their usage is needed in relation to the manufacture of the final product.

5. The above factual position being clear and the law under Rule 57A also being clear on these facts, there does not exist any scope to hold a different view either on fact or on law. There is no case of mixed question of fact and law involved, which would call for a clarification from the High Court by way of reference.