ici Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-26-1995

Reported in : (1995)(78)ELT695Tri(Mum.)bai

Appellant : ici Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the Order-in-Appeal No. PCJ/3/B. III/93, dated 5-3-1993. The following are the issues to be considered in this appeal before the Tribunal. Five items were declared as inputs used in or in relation to the manufacture of the final product but are held to be not eligible to avail of Modvat Credit in terms of Rule 57A of the Central Excise Rules. The disputed inputs are liquid nitrogen, triethylene glocol, (TEG), thermex, finor and KEM Watreat. The other issue is whether Modvat Credit of duty paid on inputs can be availed of and utilised in regard to the clearance of similar final products, if some of the final products are cleared for export under bond in terms of Rule 191BB of Central Excise Rules.

2. The appellants are engaged in the manufacture of Polyester Staple fibre and the aforesaid inputs were declared as inputs used in or in relation to the manufacture of the final product. However, the Dept.

objected to their eligibility on the ground that they are not utilised in or in relation to the manufacture of the final product and hence they are not eligible to take credit.

Thus, credit amounting to Rs. 4,22,405/- was sought to be reversed.

3. Shri Habbu, the ld. Adv. submits that though there were other issues covered by the impugned order, they have already been settled and only the aforesaid two issues are outstanding for consideration by the Tribunal. As regards the individual inputs, he refers to the write-up filed in the paper book pointing out that in the case of liquid nitrogen, thermex, Finor and KEM Watreat, they are going into the manufacturing stream and hence they are inputs used in or in relation to the manufacture of the final product. As regards the input TEG for want of sufficient data, he is not pressing the issue for decision on merits in so far as this appeal is concerned. As regards the denial of Modvat Credit in respect of duty on inputs used in the final products which were cleared under Rule 191BB of the C.E. Rules, he seeks to rely on the decision of the East Regional Bench in the case of Orissa Synthetics 1994 (69) E.L.T. 588 (Tri.) and also this Bench decision contained in 2128/94-WRB, dated 1-12-1994 [reported in 1995 (78) E.L.T.595 (Tri.)] in the case of Reliance Industries Ltd. 4. Shri Nair, the ld. SDR points out that liquid nitrogen is only giving of blanket cover in the reactor vessel and it also acts as a conveying material and hence it cannot be said to be an input used in or in relation to the manufacture of the final product. In the case of Thermex, it is only a heating medium and being in nature of an equipment, it cannot be allowed Modvat benefit. In the case of finor, he pleads that it is only made for increasing the efficiency of the boiler and goes along with the equipment. Likewise, in the case of KEM Watreat, it is a chemical used for treating water for cooling purposes.

Hence it does not go into the manufacturing process.

5. As regards the denial of Modvat credit in respect of inputs used in the final product cleared for export under Rule 191BB, he pleads that a reference Application has been moved against the decision of this Bench in the case of Reliance Industries. He would plead that export under bond referred to in Rule 57F(3) can only mean exports directly from the factory to a place outside India in terms of the bond executed under Rule 13 of the Central Excise Rules. It cannot seek to cover transfer of materials from one factory to another in terms of Rule 191BB of the Central Excise Rules. Hence in such cases Rule 57F(3) proviso

cannot be applied, irrespective of the fact that Rule 57C seeks to cover only goods exempted or are chargeable to Nil rate of duty.

6.1 After hearing both sides, in the case of Liquid Nitrogen, as per the write up, we find that it is used for creating inert atmosphere for the chemical reaction to take place. Absence of Nitrogen will result in break down of the chemical process. It is also used for transfer of molten monomer from one vessel to another. Considering the use of Nitrogen in the process, we are unable to agree that liquid nitrogen can be construed as an equipment or an appliance for denying the benefit of the Modvat credit. Nitrogen is a consumable input, used in the vessel for creating a proper atmosphere, without which chemical reaction cannot take place. Likewise, it is a material needed for transferring the molten monomer from one vessel to another. It does not become an equipment or an appliance. Hence following the ratio of the decision in the case of Kopran, reported in 1993 (67) E.L.T. 377, we hold that liquid nitrogen is an eligible input and Modvat credit of duty paid on Nitrogen is admissible.

6.2 As regards TEG, since the issue is not pressed on merits for want of sufficient data, we are to hold that Modvat credit of duty involved in regard to this input has to be reversed.

6.3 As regards Thermex, it is a material required for maintaining temperature at a particular level, so as to enable the chemical reaction to take place. It is necessary for achieving high degree of heat to enable reaction. In the circumstances, it is an input eligible for Modvat credit and it is not an equipment or machinery or appliance.

6.4 As regards Finor, it is an item used for achieving medium temperature in stream and is needed for heat setting of polyester tow during the drawing process. It is an input used in relation to the manufacturing process, without which manufacturing process will be affected. Hence we allow Mod-vat credit in respect of this item.

6.5 As regards KEM Watreat, it is a chemical added to the water. Such water treatment chemicals are required for steam generation or for cooling water. We have held in another case that they are eligible inputs. East Regional Bench in the case of Straw Products, 1992 (59) E.L.T. 572 (Tri.) have allowed Modvat benefit in respect of such water treatment chemicals. We are to observe that so long as cooling system is an integral part of the manufacturing process, chemicals added to water for achieving the required degree of efficiency in cooling system are eligible inputs.

6.6 In the result, in so far as the disputed five inputs are concerned, Modvat credit is admissible in respect of the following inputs namely, liquid nitrogen, thermex, finor and KEM Watreat. As regards TEG, Modvat credit should be reversed, since the appeal in regard to the input was not pressed on merits.

7. Now coming to the objection that Modvat credit cannot be utilised in regard to duty payable on similar final products, where some of the final products are cleared under bond in terms of Rule 191BB of the Central Excise Rules, the issue is squarely covered by the decision of the East Regional Bench in the case of Orissa Synthetics and also by our decision in the case of Reliance Industries. We have considered all the arguments from the revenue for coming to the conclusion that in the absence of specific legal provision either under Rule 57C or under Rule 57F(3) proviso, Modvat credit cannot be denied for utilisation in regard to clearance of similar final products. Rule 57C seeks to deny Modvat credit, if the final products are either wholly exempted or are chargeable to Nil rate of duty. We have held that in the case of goods cleared under a Notification issued under Rule 191BB for export purposes, such goods cannot be equated with goods exempted under an exemption Notification issued under Rule 8(1) of the C.E. Rules or Section 5A of C. Ex. Act nor they can be construed as goods chargeable to Nil rate of duty. For arriving at this conclusion, we have taken note of the Board's own instructions issued in the context of identical provisions of Rule 56A of the C.E. Rules, after consulting the Ministry of Law. The argument of Shri Nair that irrespective of the fact that Rule 57C does not specifically provide for denying benefit in respect of clearances under Rule 191BB, since Rule 57F(3) proviso can only cover direct exports from the factory and not removals under Rule 191BB for further manufacture of export goods in another factory. We do not find any warrant to read such a restriction in Rule 57F(3) proviso; because proviso to Rule 57F(3)

talks of "cleared for export under bond". In the absence of any specific restriction prescribed in that proviso, we are to go by what is meant by the term 'for export under bond' laid down in Rule 13 of the C.Ex. Rules. Under Rule 13, goods may be exported outside India without payment of duty from a warehouse or licensed factory, provided the export is made in accordance with the procedure set out in the relevant provisions of Chapter IX of the Rules and the owner enters into a bond for due performance. There is no dispute that Rule 191 BB is one of the relevant provisions of Chapter IX of the Rules. Hence if the goods are cleared under Rule 191BB, they are goods cleared for export in accordance with the relevant provisions of Chapter IX of the Rules. Viewed in this content, we could not persuade ourselves to agree that Rule 57F(3) proviso can be extended, only where the goods are cleared direct from the factory to the port of shipment. Hence, we find no reason to take any different view from the one we have already taken in the case of Reliance Industries. Hence we hold that objection from the Dept. on this ground is not sustainable and direct the authorities to allow the credit to be utilised in regard to clearance of similar final product.

8. In the result, we hold that inputs namely liquid Nitrogen, Thermex, Finer and KEM Watreat are eligible to avail Modvat credit. As regards TEG, appeal is dismissed, since issue is not pressed on merits. We also direct that Modvat credit of duty paid on inputs used in the final products, which were so far cleared for export in terms of Rule 191BB; should be allowed to be utilised in regard to clearance of similar products for home consumption.