

**Collector of C. Ex. Vs. Mohta Alloys and Steels Work**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-03-1995

**Reported in :** (1995)(79)ELT505TriDel

**Appellant :** Collector of C. Ex.

**Respondent :** Mohta Alloys and Steels Work

**Judgement :**

1. Collector of Central Excise, Chandigarh has filed these two appeals against a combined Order-in-Appeal No. 1075-76/CE/CHD/91, dated 27-6-1991 passed by Collector of Central Excise (Appeals), Chandigarh whereby the latter had allowed two appeals filed before her by M/s.

B.D.A. Steels Pvt. Ltd., Jalandhar and M/s. Mohta Alloys & Steel Works, Ludhiana who are respondents in the present proceedings and held them to be eligible for Modvat benefit in respect of Ramming mass, hot tops, nozzle setting compound and hard coke powder. Such benefit had been held to be inadmissible for the said items by the Assistant Collector, Jalandhar and Ludhiana respectively holding them to be not inputs used in or in relation to the manufacture of their final products i.e. iron and steel products namely steel ingots. The said orders of the two Assistant Collectors were set aside by the Collector vide her impugned order wherein she observed that the excluded category of inputs under Rule 57A does not include Ramming mass. She held the inputs in these cases to be used in relation to the manufacture of final products Ramming mass, it was noted, is a heat resistant chemical product used to protect the heat in a molten metal and

hence it was held to be used in relation to the manufacture of the final product. It was further observed that Ramming Mass is classifiable under sub-heading 38.01 of Central Excise Tariff Act, 1985 and not as tool machine, machinery plant etc. She had then observed in her order that it had been held by Honourable Supreme Court that even gloves are used in relation to the manufacture of final product and qualify for Modvat facility. She had also mentioned that denial of modvat on such inputs would amount to double taxation, once at the input stage and then on the final product.

Hence, she held that the inputs in question are eligible for Modvat credit.

2. In the appeal, it has been contended by the appellant Collector that hot tops cannot be considered as an input. The said item is used only to cover the hot liquid metal at the top of the mould to keep the liquid in place and to avoid wastage. They do not themselves form part of the final product. It cannot be said that it is not possible to manufacture the final product without them. Hot tops are more in the nature of apparatus on which modvat credit is not permissible by virtue of Explanation to Rule 57A.3. It is then submitted in the appeal that nozzle setting compound is used for setting of compound in stopper nozzles which are fixed to the ladle. It is, therefore, urged that the compound cannot be considered to be used in or in relation to the manufacture of final product. It is used for maintenance of the apparatus/equipment.

4. As regards ramming mass, it has been submitted that it is a material used for the maintenance and repair of hearth of the furnace which can be treated as a part of furnace/machinery. Since no modvat is available on parts of machinery, no modvat credit was admissible on ramming mass used for maintenance of furnace. As far as Hard coke powder is concerned, it is a carbonising material basically made of coke and does not lend any specific quality which may make it classifiable as inputs in terms of Rule 57A. The finding by-the Collector (Appeals) that Ramming mass is classified under sub-Heading 38.01 of the Central Excise Tariff and not as tool machine, machinery plant etc. cannot justify the grant of modvat credit therefor. It has been submitted that Ramming mass though classified under Heading 38.01, by its use as a material for maintenance of hearth, qualifies to be

an item related to machinery and therefore it is excluded from modvat under Rule 57 A. It has been pleaded that the order-in-appeal be quashed and the orders-in-original restored.

5. The appeals were heard together when Shri K.K. Dutta, learned Departmental Representative appeared for the appellant Collector. He reiterated the contentions raised in the appeal. He cited the following Tribunal decisions :-Sathya Steel Strips (P) Ltd. v. Collector of Central Excise -1988 (38) E.L.T. 185 Tribunal (SRB).

2. M.B. Smelters Pvt. Ltd. v. Collector of Central Excise, Hyderabad -1994 (52) ECR 33 (Tribunal) (SRB).

In these cases, Ramming mass has been held to be not eligible for Modvat benefit. Shri Dutta pleaded that the appeals be allowed and the impugned order-in-appeal set aside. Shri P.S. Bedi replied to the arguments of the learned Departmental Representative. He supported the order-in-appeal. The items excluded from the category of inputs in the Explanation under Rule 57A are specifically mentioned. The list of such excluded items is exhaustive. It is not permissible to enlarge the scope of such exclusion by referring to items used in the machinery or as machinery or for the machinery. The items should be machinery in order to attract the exclusion. He referred to the Tribunal's order in Collector of Central Excise, Chandigarh v. A.B. Tools Ltd. wherein it has been held that Ramming Mass is used in relation to the manufacture of Steel Ingots and is to be considered as an eligible input for the purpose of availing of Modvat. Shri Bedi then stated that Hot Tip is a chemical which melts during the operations and becomes part and parcel of the Steel Ingots. He pleaded that the order-in-appeal be upheld and the revenue's appeal dismissed.

6. We have considered the submissions. We find that the item Ramming Mass is specifically covered by the Larger Bench decision in the A.B.Tools Ltd. case cited before us. The same Collector, Chandigarh was the appellant in that case also. The decision of the Honourable Calcutta High Court in Singh Alloys and Steel Limited v. Assistant Collector of Central Excise reported in 1993 (66) E.L.T. 594 was followed therein.

Ramming mass was one of the items considered in the Singh Alloys case alongwith Dolopatch mix and magnesite peas. It was held that merely because the items (which are chemicals) are used for the machinery, it does not make such chemicals machines. It does not matter that the items are used in the machinery or for the purpose of machinery. It was noted that the items machines, appliance, equipment, tool and apparatus will not include the items in question which are classified in the Tariff under Headings and Sections totally different from the Headings and Sections under which machinery, machine etc. are classified.

7. Shri Dutta, learned Departmental Representative had referred to two decisions of the South Regional Bench wherein Ramming mass was held to be not eligible for Modvat. The Sathya Steel Strips case which was the earlier case had been decided on 23-2-1988 before the Calcutta High Court judgment in the Singh Alloys case was delivered. The second decision of the South Regional Bench in the case of M.B. Smelters Pvt.

Ltd. reported in 1994 (52) ECR 33 which is dated 7-12-1993 no doubt took note of the Singh Alloys judgment of the Honourable Calcutta High Court. They actually distinguished the two cases observing that the said judgment was distinguishable on facts in regard to the nature and use of the inputs. The observation of the Collector (Appeals) was extracted which is reproduced below. It was upheld, observing that he had given cogent reasons on the question of Modvat eligibility of the inputs.

"On going through the explanation submitted by the party, it is seen that essentially these materials are being utilised as a protective refractory and not as a raw material, consumable or such item which could be deemed to be directly utilised in the manufacture of finished product, viz., Ferro Alloys. As explained by the party, during the process of manufacture these materials which will be used as a protective refractory gets consumed over a period of time with the result a part of the compounds contained in them gets transferred into the finished product. But, the fact remains that these are used as a protective refractory only, and the consumption of these items in due course is only incidental to the process of manufacture and hence the usage of these items in the manufacture of Ferro

Chrome does not make them a part of the raw materials and therefore, the party is not eligible to take credit on these goods." With respect, we have to differ from the conclusion reached by the South Regional Bench and follow the Calcutta High Court decision which has been followed by the Larger Bench in the A.B. Tools case referred to earlier. We also find that the materials under consideration in the M.B. Smelters case were used as a protective refractory and not as a raw material, consumable or such item which could be deemed to be directly utilised in the manufacture of the final product. We have to point out with respect that there is nothing in the Modvat provisions to require that the items should be raw materials to be considered as inputs for the purpose of Rule 57A. From the nature of use of Ramming Mass in the manufacturing operations, it is seen that it is a consumable item; though here again the criterion of consumability is not a requirement under the said provision. It does get consumed over a period of time. Immediate consumption is not the test of eligibility.

Direct utilisation in the manufacture of the finished product has been referred to in the order of the Collector of Appeals extracted above.

The requirement of Rule 57A is that the goods should be used in or in relation to the manufacture of the final product. Direct utilisation is not a valid test to be applied to decide eligibility of modvat credit.

8. We find there is a reference in the M.B. Smelters order to a decision of the West Regional Bench of the Tribunal distinguishing the Calcutta High Court judgment. Though there is no citation of the said decision of the West Regional Bench, we feel the reference is to B.K.Paper Mills v. Collector of Central Excise 452. Para 8(1) of their order at pages 462-463 of the report is relevant in this regard. As, however, the Singh Alloys Judgment holds the field today, there being no contrary judgment of any other High Court or Supreme Court, we respectfully follow the same. Coming to the present matter, we find that the Collector (Appeals) has considered only Ramming mass. There is no discussion about the manner of use of the other items and their eligibility for Modvat credit based on such use. But the Collector had observed in her order that it had been held by the Honourable Supreme Court that even gloves are used in relation to the manufacture of final

product and qualify for Modvat facility. We are afraid the Collector (Appeals) has not stated the correct facts.

The Honourable Supreme Court judgment in respect of Hand-gloves for which she had not given the citation was not on a modvat matter. That was a decision under the Bengal Financial (Sales Tax) Act in the case of Member, Board of Revenue v. Phelps Company Pvt. Ltd. reported in 1972 (29) STC 101 (SC). The relevant statutory provision considered in that case was not in part materia with the provisions of Rule 57A which has a self-contained definition of the term "inputs" which keeps out certain items from its scope. It was, therefore, necessary for her to consider the manner of use of the material in question in the manufacturing process and decide the question. As the order is non-speaking in this regard, we set aside that part of the order-in-appeal relating to items other titan Ramming mass and remand the matter to the Collector (Appeals) for de novo decision in accordance with law after complying with the principles of natural justice and passing a speaking order. We uphold the finding in the order-in-appeal as far as Ramming mass is concerned and dismiss the appeal to that extent. The appeals are disposed of on the above terms.

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