

industrial Chemicals and Vs. Collr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-27-1995

Reported in : (2003)(162)ELT1016TriDel

Judge : V T K.S., G B Deva

Appellant : industrial Chemicals and

Respondent : Collr. of C. Ex.

Judgement :

1. These are three appeals. Two are filed by M/s. Industrial Chemicals and Monomers Ltd., and the other filed by M/s. Gulf defines (P) Ltd., involving common issues and, therefore they are clubbed together and are being disposed of by this common order.

2. The point to be considered in these cases is whether Carbon Paste used in the manufacture of Calcium Carbide is entitled to benefit of exemption in terms of Notification No. 201/79-C.E., dated 4-6-79 as amended, Notification No. 201/79-C.E. exempts all excisable goods on which duty of excise is leviable and in the manufacture of which any goods falling under Tarrif item 68 have been used, as raw materials or component parts from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs.

3. The appellants are manufacturers of Calcium Carbide. It was contended that they used carbon paste in the manufacture of calcium carbide and though the

purpose was to convey electricity to arc furnace nevertheless it was used as a raw material in addition to technical necessity for conveying electricity to the furnace and carbon paste was consumed in the manufacture of calcium carbide and calcium carbide contained some percentage of carbon paste. Hence, it was claimed that carbon paste was fully satisfied the criterion of raw material and the duty paid thereon is eligible under Notification No. 201/79 for purpose of availing credit of duty. The concerned Assistant Collector in both the cases rejected the contention of the party following the decision of the Tribunal in the case of Collector of Central Excise, Madras v. Muthu Chemical Industries reported in 1986 (26) E.L.T. 581 wherein it was held that "carbon paste if used in an electrode which is primarily a device for the delivery of the current to the mass of lime and coke during the manufacture of calcium carbide and electrodes, used in the process of functioning, are used up - like in the case of carbon rods used in a Cine Projector. Carbon paste used in an electrode in the manufacture of calcium carbide, therefore, cannot be treated as raw material, electrode being merely a device for delivery of current into the material for reaction." The view of the Assistant Collector was upheld by the Collector (Appeals) holding that carbon paste is not a raw material.

4. The appellants M/s. Industrial Chemicals and Monomers Ltd. and M/s.

Gulf Olefines (P) Ltd. are represented by Shri S.K. Kohli and Shri G. Shiv Dass, learned Advocates respectively and the Department was duly represented by Shri Prabhat Kumar, learned SDR.5. Shri S.K. Kohli submitted that the Assistant Collector has taken a similar view for the earlier period as per his order dated 26-3-83 against which appeal was filed by the party before the Collector (Appeals) and Collector (Appeals) allowed the appeal as per orders dated 13-7-83 holding that carbon paste is a raw material, eligible for set off in terms of Notification No. 201/79 as amended. Department has filed an appeal against that order before the Tribunal but the same was dismissed as barred by time. Again the Assistant Collector has taken the same view stating that the latest decision of the Tribunal in the case of M/s. Muthu Chemical Industries is applicable and accordingly, carbon paste is not a raw material. He contended that M/s. Muthu Chemical Industries case is clearly distinguishable as the facts were not properly presented in that

case since carbon paste cannot be considered as a device and in fact it was considered in the process of manufacture of the household product and this consumption aspect was not gone into in that case. Referring to the affidavit filed by the appellants regarding process of manufacture of calcium carbide, he drew our attention to the relevant portion therein which states as under : "As mentioned earlier, the current is conducted into the furnace through carbon electrodes. The electrodes are made out of carbon paste which predominantly made of carbon, which is required for and forms part of the final product calcium carbide as may be observed from the diagram of the furnace in Annexure-II. Carbon paste procured is pulverized to the required sizes and packed in cylindrical steel castings. These are then lowered into the furnace for conducting electricity. In the process of conducting electricity these electrodes also melt and the carbon forms part of the finished product calcium carbide while melting. The principal source of carbon for carbide is from the charcoal that is fed along with lime. The carbon in the carbon electrode paste supplements the carbon from charcoal. The proportion of charcoal charged and the carbon paste consumed is 1 : 0.04. The carbon electrode paste normally contains 65 -70% fixed carbon. The carbon required for calcium carbide is contributed in the above proportion from charcoal and carbon paste."Collector of Central Excise, Allahabad v. Hindustan Aluminium Corporation reported in 1995 (80) E.L.T. 287 (Tribunal) = 1995 (56) ECR 189, wherein it was held that set off admissible even though the raw materials are consumed in the manufacture of intermediate product (which may be exempt from duty) and not directly used in the manufacture of final product. He also relied upon the decision of the Supreme Court in the case of Collector of Central Excise v. Jay Engineering Works Ltd. reported in 1989 (39) E.L.T. 169 (S.C.) and the decision of the Tribunal in the case of Collector of Central Excise v. Formica India Division reported in 1991 (51) E.L.T. 370 = 1990 (30) ECR 425, in support of his contention.

6. While adopting the arguments of Shri S.K. Kohli, Shri Shivadass, learned Advocate submitted that it is clear from the respective affidavits filed on behalf of the appellants that the electrodes which contains carbon electrode paste which is also a carbonaceous material reacts with lime-shell and goes into the reaction to form calcium carbide. He also referred to the technical literature i.e.

Encyclopaedia of Electrochemistry by Clifford A. Hampel and Encyclopaedia of Chemical Technology, Third Edition Volume 4 of Kirk-Othmer to show that power consumption in producing calcium carbide in modern equipment is in the range of 2700 to 3000 Kwh per ton of 80 per cent carbide, corresponding raw material requirements are lime 0.9t; coke 0.6t; electrode paste, 20 to 25 pounds and graphite electrodes are consumed in the melting process. The electrode tip is eroded by contact with the liquid metal and slag. The rate of incremental tip consumption generally increases when operating currents of power are increased. He contended that the decision in the case of Muthu Chemical Industries (supra) is no longer a good law in view of the decision of the Supreme Court in the case of Collector of Central Excise v. Ballarpur Industries Ltd., reported in 1989 (43) E.L.T. 804 wherein it was held that the inputs used in the integrated process to be treated as raw material having been used in the end product and sodium sulphate used for chemical reaction at pulp stage is treatable as raw material used in the manufacture of paper even if sodium sulphate is burnt and does not retain its identity in the end product with reference to set off of duty under Notification No. 105/82 C.E. Apart from relying upon the decisions cited by Shri Kohli, he referred to the decision of the Tribunal in the case of Sandhur Manganese & Iron Ores Ltd. v. Collector of Central Excise, Bangalore reported in 1985 ECR 862 and in support of his contention that electrode is not a device or machine, he cited a series of decisions.

7. Referring to the affidavits filed on behalf of the appellants with reference to the process of manufacture of calcium carbide, Shri Prabhat Kumar submitted that carbon paste was used for conducting electricity and it was only incidental that some percentage was absorbed in the process of manufacture of the final product and accordingly it cannot be said that carbon electrode paste is the raw material out of which calcium carbide is manufactured. In support of his contention that carbon paste is neither raw material nor component and not entitled to concession under Notification No. 201/79-C.E. in addition to the decision in the case of Muthu Chemical Industries (supra) he referred to the following decisions :Collector of Central Excise, Chandigarh v. Kashmir Vanaspati and Anr. Amrit Vanaspati Co. v. Collector of Central Excise, Meerut - 1988 (35) E.L.T. 479 Murugappa Morgamite Ceramic Fibres Ltd. v. Collector of Central Excise, Madras Mukund Iron & Steel

Works Ltd. v. Collector of Central Excise - 1990 (45) E.L.T. 84 Premier Tyres Ltd. v. Collector of Central Excise - 1993 (68) E.L.T. 886. Ferro Alloys Corporation Ltd. v. CCE, Guntur - 1985 (22) E.L.T. 820 8. It was duly replied by the Counsels for the appellants that the decisions referred to by the Departmental representative are not applicable to the facts of this case since consumption and entitlement with reference to Notification 201/79 was not dealt with therein and some of the decisions were even prior to the decisions in the case of Ballarpur Industries (supra) and furthermore the decisions referred to in the case of Mukund Iron Steel has been overruled by the Calcutta High Court in the case of Singh Alloys and Steel Ltd. reported in 1993 (66) E.L.T. 594 Cal.

9. We have carefully considered the submissions made by both sides and perused the records including case law cited by both sides. Admittedly, the carbon paste was used in the process of manufacture of the finished product calcium carbide and since it was used in and in relation to the process of manufacture of the finished product either of technical necessity or otherwise and not only it was used but consumed in the process of manufacture of the final product and the final product also contained some percentage of the carbon paste. The Department was not justified in denying benefit in terms of Notification on the ground that it was not used as raw material but it was consumed incidentally in the process of manufacture of the product. The Supreme Court clearly held in the case of Collector v. Eastend Paper Industries Ltd. reported in 1989 (43) E.L.T. 201 that inputs used in the integrated process of manufacture to be treated as raw material having been used in the end product. This issue has been considered in the case of Ballarpur Industries and case law cited on behalf of the appellants that even if an item used for Chemical reaction at intermediate stage is treatable as raw material used in the manufacture of finished product and even if an input is burnt up and does not retain its identity still it be eligible for set off of duty in terms of Notification 201/79 and amended Notification No. 105/82 as it was rightly pointed out by the Counsels for the appellants. Having regard to the submissions made before us with reference to the facts and technical literature by the appellants and the same had not been controverted, and following the ratio of the decisions cited by the appellants, we are of the view that carbon paste used in the manufacture of calcium carbide was entitled to the benefit of Notification No. 201/79. Accordingly,

all these appeals are allowed.

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